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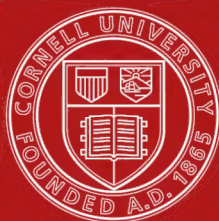
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CONSTITUTION
JEFFERSON'S MANUAL
AND
RULES OF THE HOUSE OF
REPRESENTATIVES
OF THE UNITED STATES
WITH
A DIGEST OF THE PRACTICE

SIXTY-SECOND CONGRESS
THIRD SESSION

By
CHARLES R. CRISP
CLERK AT THE SPEAKER'S TABLE



WASHINGTON
GOVERNMENT PRINTING OFFICE
1912

EXPLANATORY STATEMENT.

To most of the decisions herein the references are to Hinds' Precedents, giving volume number and section. Decisions rendered since the publication of the Precedents, and decisions cited not codified in the Precedents, references are to the Congressional Record.

Believing the rules of the House without annotations are superfluous, and not used by the Members, to reduce the size of the volume, they are left out.

The full text of certain important decisions is incorporated herein as sections 942-948, inclusive.

CHARLES R. CRISP.

DECEMBER 9, 1912.

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- Third. Correction of reference of public bills.
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- Fifth. Unfinished business.
- Sixth. The morning hour for the consideration of bills.
- Seventh. Motion to go into the Committee of the Whole House on the state of the Union.
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- Second. Motions to suspend rules. Rule 27, clause 1.
- Third. Motion to discharge committees. Rule 27, clause 4.

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- First. District of Columbia business. Rule 24, clause 8.

WEDNESDAYS.

Call of committees under Calendar Wednesday. Rule 24, clause 7.

FRIDAYS.

Bills on the Private Calendar. Rule 24, clause 6.

Second and fourth private pensions. Except second and fourth private claims.

CONSTITUTION.

CONSTITUTION OF THE UNITED STATES: 1787.

WE THE PEOPLE of the United States, in Order to
form a more perfect Union, establish
Justice, insure domestic Tranquility,
provide for the common defence, promote the general
Welfare, and secure the Blessings of Liberty to our-
selves and our Posterity, do ordain and establish this
CONSTITUTION for the United States of America.

Decisions of the Supreme Court of the United States relating to the pre-
amble are:

§ 2. Decisions of the court.

Chisholm v. Georgia, 2 Dall., 419; *McCulloch v. State of Maryland et al.*, 4 Wh., 316; *Brown et al. v. Maryland*, 12 Wh., 419; *Barron v. The Mayor and City Council of Baltimore*, 7 Pet., 243; *Dred Scott v. Sanford*, 19 Howard, 393; *Lane County v. Oregon*, 7 Wall., 71; *Texas v. White et al.*, 7 Wall., 700; *Claffin v. Houseman, assignee*, 93 U. S., 130; *Williams v. Bruffy*, 96 U. S., 176; *Tennessee v. Davis*, 100 U. S., 257; *Langford v. United States*, 101 U. S., 341; *United States v. Jones*, 109 U. S., 513; *Fort Leavenworth Railroad Co. v. Lowe*, 114 U. S., 525; *The Chinese Exclusion Case*, 130 U. S., 581; *Geofroy v. Riggs*, 133 U. S., 258; *In re Neagle*, 135 U. S., 1; *In re Ross*, 140 U. S., 453; *Logan v. United States*, 144 U. S., 263; *Lascelles v. Georgia*, 148 U. S., 537; *Fong Yue Ting v. United States*, 149 U. S., 698; *In re Tyler*, 149 U. S., 164; *United States v. E. C. Knight Co.*, 156 U. S., 1; *Mattox v. United States*, 156 U. S., 237; *In re Quarles and Butler*, 158 U. S., 532; *In re Debs, Petitioner*, 158 U. S., 564; *Ward v. Race Horse*, 163 U. S., 504; *De Lima v. Bidwell*, 182 U. S., 1; *Prout v. Starr*, 188 U. S., 537; *Jacobson v. Massachusetts*, 197 U. S., 11; *South Carolina v. United States*, 199 U. S., 437; *Ellis v. U. S.*, 206 U. S., 246; *Dick v. U. S.*, 208 U. S., 340; *Muller v. Oregon*, 208 U. S., 412.

ARTICLE I.

SECTION. 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

§ 3. Legislative powers vested in Congress.

Decisions of the Supreme Court of the United States:

§ 4. Decisions of the court. Hayburn's case (notes), 2 Dall., 409; *Field v. Clark*, 143 U. S., 649; *Union Bridge Co. v. United States*, 204 U. S., 364; *United States v. Heinszen*, 206 U. S., 370; *St. Louis & Iron Mountain Railway v. Taylor*, 210 U. S., 281; *Monongahela Bridge Co. v. United States*, 216 U. S., 177; *United States v. Grimaud*, 216 U. S., 614.

§ 5. Members chosen by people of the States every second year.

SECTION. 2. ¹ The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, * * *.

This clause requires election by the people and State authority may not determine a tie by lot (I, 775).

The term of a Congress begins on the 4th of March of the odd numbered years and extends through two years. This results from the action of the Continental Congress on September 13, 1788, in declaring, on authority conferred by the Federal Convention, "the first Wednesday in March next" to be "the time for commencing proceedings under the said Constitution." This date was the 4th of March, 1789. And soon after the first Congress assembled a joint committee determined that the terms of Representatives and Senators of the first class commenced on that day, and must necessarily terminate with the 3d of March, 1791 (I, 3). By a practice having the force of common law, the House meets at 12 m. when no other hour is fixed (I, 4, 210), and as legislative rather than calendar days are observed by the Houses of Congress, it has followed that the 3d of March must extend to the hour of 12 m. on March 4, and this hour has been fixed as that on which a Congress expires (V, 6694-6697). Although the last session may be adjourned before that hour (V, 6724, footnote), in practice this does not happen; and the Speaker at the hour of 12 m., March 4, usually declares the House

adjourned sine die, without motion or vote, even interrupting a pending roll call (V, 6715-6718). But a motion to adjourn may be put and carried (V, 6711-6713).

SECTION. 2. * * * and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

§ 7. Electors of the House of Representatives.

The House, in the decision of an election case, has rejected votes cast by persons not naturalized citizens of the United States, although they were entitled to vote under the statutes of a State (I, 811); but where an act of Congress had provided that a certain class of persons should be deprived of citizenship, a question arose over the proposed rejection of their votes in a State wherein citizenship in the United States was not a qualification of the elector (I, 451). In an exceptional case the House rejected votes cast by persons lately in armed resistance to the Government, although by the law of the State they were qualified voters (I, 448); but later, the House declined to find persons disqualified as voters because they had formerly borne arms against the Government (II, 879).

§ 8. Decisions of the court. Decisions of the Supreme Court of the United States. Ex parte Yarbrough, 110 U. S., 651; Wiley v. Sinkler, 179 U. S., 58.

§ 9. Age as a qualification of the Representative.

² No person shall be a Representative who shall not have attained to the Age of twenty-five Years, * * *.

A Member-elect not being of the required age, he was not enrolled by the Clerk and he did not take the oath until he had reached the required age (I, 418).

§ 10. Citizenship as a qualification of the Member.

* * * and been seven Years a Citizen of the United States, * * *.

A native of South Carolina, who had been abroad during the Revolution and on his return had not resided in the country seven years, was held to be qualified as a citizen (I, 420). A Member who had long been a resident of the country, but who could produce neither the record of the court nor his final naturalization papers, was nevertheless retained in his seat by the House (I, 424).

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§§ 11, 12.

* * * and who shall not, when
 § 11. Inhabitaney elected, be an Inhabitant of that State
 as a qualification of the Member. in which he shall be chosen.

The meaning of the word "inhabitant" and its relation to citizenship has been discussed (I, 366, 434), and the House has held that a mere sojourner in a State was not qualified as an inhabitant (I, 369), but a contestant was found to be an actual inhabitant of the State although for sufficient reason his family resided in another State (II, 1091). Residence abroad in the service of the Government does not destroy inhabitaney as understood under the Constitution (I, 433). One holding an office and residing with his family for a series of years in the District of Columbia exclusively was held disqualified to sit as a Member from the State of his citizenship (I, 434); and one who had his business and a residence in the District of Columbia and had no business or residence in Virginia was held ineligible to a seat from that State (I, 436). One who had a home in the District of Columbia, and had inhabited another home in Maryland a brief period before his election, but had never been a citizen of any other State, was held to be qualified (I, 432). Also a Member who had resided a portion of a year in the District of Columbia, but who had a home in the State of his citizenship and was actually living there at the time of the election, was held to be qualified (I, 435).

It has been decided by the House and Senate that no State may add to the qualifications prescribed by the Constitution
 § 12. Qualifications other than those specified by the Constitution. (I, 414-416, 632). Whether Congress may by law establish qualifications other than those prescribed by the Constitution has been the subject of much discussion (I, 449, 451, 457, 458, 478); but in a case wherein a statute declared a Senator convicted of a certain offense "forever thereafter incapable of holding any office of honor, trust, or profit under the Government of the United States," the Supreme Court expressed the opinion that the final judgment of conviction did not operate, ipso facto, to vacate the seat or compel the Senate to expel or regard the Senator as expelled by force alone of the judgment (II, 1282). Whether the House alone may set up qualifications other than those of the Constitution has also been a subject often discussed (I, 414, 415, 443, 457, 458, 469, 481, 484). The Senate has always declined to act on the supposition that it had such a power (I, 443, 483), and during the stress of civil war the House of Representatives declined to exercise the power, even under circumstances of great provocation (I, 449, 465). But later, in one instance, the House excluded a Member-elect

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§§ 13-15.

on the principal argument that it might itself prescribe a qualification not specified in the Constitution (I, 477).

Both Houses of Congress have decided, when a Member-elect is found to be disqualified, that the person receiving the next highest number of votes is not entitled to the seat (I, 323, 326, 450, 454, 463, 469), even in a case wherein reasonable notice of the disqualification was given to the electors (I, 460).

§ 13. Minority candidate not seated when returned Member is disqualified.

³ Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons. * * *

§ 14. The old provision for apportionment of Representatives and direct taxes.

This provision was changed after the civil war by section 2 of the Fourteenth Amendment.

* * * The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Penn-

§ 15. Census as a basis of apportionment.

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§§ 16-18.

sylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

Under the last apportionment, act of August 8, 1911, the House of Representatives will be composed of 435 Members.

Decisions of the Supreme Court of the United States:

Dred Scott v. Sandford, 19 Howard, 393; Veazie Bank v. Fenno, 8 Wall., 533; Scholey v. Rew, 23 Wall., 331; De Treville v. Smalls, 98 U. S., 517; Gibbons v. District of Columbia, 116 U. S., 404; Pollock v. Farmers' Loan & Trust Co. (Income Tax case), 157 U. S., 429; Pollock v. Farmers' Loan & Trust Co. (Rehearing), 158 U. S., 601; Thomas v. United States, 192 U. S., 363.

§ 16. Decisions of the court.

⁴ When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

§ 17. Writs for elections to vacancies in representation.

Vacancies are caused by death, resignation, declination, withdrawal, or by action of the House in declaring a vacancy as existing or causing one by expulsion.

It was long the practice to notify the executive of the State when a vacancy was caused by the death of a Member during a session (II, 1198-1202); but since improvements in transportation have made it possible for deceased Members to be buried at their homes it has been the practice for State authorities to take cognizance of the vacancies without notice. When a Member dies while not in attendance on the House or during a recess the House is sufficiently informed of the vacancy by the credentials of his successor, when they set forth the fact of the death (I, 568). The death of a Member-elect creates a vacancy, although no certificate may have been awarded (I, 323), and in such a case the candidate having the next highest number of votes may not receive the credentials (I, 323). A Member whose seat was contested dying, the House did not admit a claimant with credentials until contestant's claim was settled (I, 326); and where a contestant died after a report in his favor, the House unseated the returned Member and declared the seat vacant (II, 596).

§ 18. Vacancy from death.

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§§ 19-22.

In recent practice the Member frequently informs the House by letter that his resignation has been sent to the State executive
§ 19. Vacancy from resignation. (II, 1167-1176) and this is satisfactory evidence of the resignation (I, 567). And where he does not inform the House the State executive may do so (II, 1193, 1194). But sometimes the House learns of a Member's resignation only by means of the credentials of his successor (II, 1195, 1356). Where the fact of a Member's resignation has not appeared either from the credentials of his successor or otherwise, the Clerk has been ordered to make inquiry (II, 1209), or the House has ascertained the vacancy from information given by other Members (II, 1208). It has been established that a Member or Senator may resign, appointing a future date for his resignation to take effect, and until the arrival of the date may participate in the proceedings (II, 1220-1225, 1228, 1229). A Member who had resigned was not permitted by the House to withdraw the resignation (II, 1213). Only in a single exceptional case has the House taken action in the direction of accepting a resignation (II, 1214). Sometimes Members who have resigned have been reelected to the same House and taken seats (II, 1210-1212, 1256). A Member who has not taken his seat has resigned (II, 1231). A letter of resignation is presented as privileged (II, 1167-1176); but a resolution to permit a Member to withdraw his resignation was not so treated (II, 1213).

A Member who has been elected to a seat may decline to accept it, and in such a case the House informed the executive of the
§ 20. Vacancy from declination. State of the vacancy (II, 1234). The House has decided an election contest against a returned Member who had not appeared to claim the seat (I, 638). In one instance a Member-elect who had been convicted in the courts did not appear during the term (IV, 4484, footnote).

At the time of the secession of several States Members of the House from those States withdrew (II, 1218). In the Senate, in cases of such withdrawals, the Secretary was directed to omit the names of the Senators from the roll (II, 1219), and the act of withdrawal was held to create a vacancy which the legislature might recognize (I, 383).

Where the House, by its action in a question of election or otherwise, creates a vacancy, the Speaker is directed to notify the
§ 22. Vacancy by action of the House. Executive of the State (I, 502, 709, 824; II, 1203-1205). A resolution as to such notification is presented as a question of privilege (III, 2589).

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§§ 23-27.

The House declines to give prima facie effect to credentials, even though they be regular in form, until it has ascertained whether or not the seat is vacant (I, 322, 518, 565, 569), and a person returned as elected at a second election was unseated on ascertainment that another person had actually been chosen at the first election (I, 646).

§ 23. Questions as to the existence of a vacancy.

§ 24. Functions of the state executive in filling vacancies.

The term "vacancy" as occurring in this paragraph of the Constitution has been examined in relation to the functions of the state executive (I, 312, 518). A federal law empowers the States and Territories to provide by law the times of elections to fill vacancies (I, 516); but an election called by a governor in pursuance of constitutional authority was held valid although no state law prescribed time, place, or manner of such election (I, 517). Where two candidates had an equal number of votes, the governor did not issue credentials to either, but ordered a new election after they had waived their respective claims (I, 555).

§ 25. Term of a Member elected to fill a vacancy.

A Member elected to fill a vacancy serves no longer time than the remainder of the term of the Member whose place he fills (I, 3).

§ 26. House chooses the Speaker and other officers.

⁵ The House of Representatives shall choose their Speaker and other Officers;
* * *

The officers of the House are the Speaker, who has always been one of its Members and whose term as Speaker must expire with his term as a Member; and the Clerk, Sergeant-at-Arms, Doorkeeper, Postmaster, and Chaplain (I, 187), no one of whom has ever been chosen from the membership of the House, and who continue in office until their successors are chosen and qualified (I, 187), in one case continuing through the entire Congress succeeding that in which they were elected (I, 244, 263). The House formerly provided by special rule that the Clerk should continue in office until another should be chosen (I, 187, 188, 235, 244); and in later years the statutes have imposed on the Clerk, Sergeant-at-Arms, and Doorkeeper duties which contemplate their continuance (I, 14, 15).

The Speaker, who was at first elected by ballot, has been chosen by viva voce vote since 1839 (I, 187). In 1809 the House held that a Speaker should be elected by a majority of all present (I, 215); and in 1879 it was held that a majority of all the membership of the House was not required, but only a majority of those present if a quorum (I, 216). On two occasions, by special rule,

§ 27. The vote on election of a Speaker.

CONSTITUTION OF THE UNITED STATES.

§§ 28-32.

Speakers were chosen by a plurality of votes; but in each case the House by majority vote adopted a resolution declaring the result (I, 221, 222). The House has declined to choose a Speaker by lot (I, 221).

The Speaker having died during the recess of Congress, the Clerk at the next session called the House to order, ascertained the presence of a quorum, and then the House proceeded to elect a successor (I, 234). Speakers have resigned by rising in their place and addressing the House (I, 231, 233), by calling a Member to the Chair and tendering the resignation verbally from the floor (I, 225), or by sending a letter which the Clerk read to the House at the beginning of a new session (I, 232). When the Speaker resigns no action of the House excusing him from service is taken (I, 232). In one instance a Speaker resigned on the last day of the Congress, and the House elected a successor for the day (I, 225).

§ 28. Vacancies in the office of Speaker.

The effect of a law to regulate the action of the House in choosing its own officers has been discussed (IV, 3819), and such a law has been considered of doubtful validity (V, 6765, 6766) in theory and practice (I, 241, 242).

The office of Clerk becoming vacant, it was held that the House would not be organized for business until a Clerk should be elected (I, 237); but in another instance some business intervened before a Clerk was elected (I, 239). At the time of organization, while the Clerk of the preceding House was yet officiating, and after the Speaker had been elected, the House proceeded to legislation and other business before electing a Clerk (I, 242, 244). But in one case it was held that the law of 1789 bound the House to elect the Clerk before proceeding to business (I, 241).

§ 30. Election of Clerk in relation to business.

§ 31. House of Representatives alone impeaches.

* * * and [the House of Representatives] shall have the sole Power of Impeachment.

In 1868 the Senate ceased in its rules to describe the House, acting in an impeachment, as the "grand inquest of the nation." (III, 2126.)

SECTION 3. ¹ The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote.

§ 32. Numbers, terms, and votes of Senators.

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§§ 33-35.

² Immediately after they shall be assembled in
Consequence of the first Election, they
shall be divided as equally as may be
into three classes. The Seats of the
Senators of the first Class shall be vacated at the
Expiration of the second Year, of the second Class
at the Expiration of the fourth Year, and of the third
Class at the Expiration of the sixth Year, so that
one-third may be chosen every second
Year; and if Vacancies happen by
Resignation, or otherwise, during the
Recess of the Legislature of any State, the Execu-
tive thereof may make temporary Appointments
until the next Meeting of the Legislature, which
shall then fill such Vacancies.

§ 33. Division of
the Senate into
classes.

§ 34. Filling of va-
cancies in the
Senate.

³ No person shall be a Senator who shall not have
attained to the Age of thirty Years, and
been nine Years a Citizen of the United
States, and who shall not, when elected, be an Inhab-
itant of that State for which he shall be chosen.

§ 35. Qualifications
of Senators.

In 1794 the Senate decided that Albert Gallatin was disqualified, not having been a citizen nine years although he had served in the war of Independence and was a resident of the country when the Constitution was formed (I, 428); and in 1849 that James Shields was disqualified, not having been a citizen for the required time (I, 429). But in 1870 the Senate declined to examine as to H. R. Revels, a citizen under the recently adopted fourteenth amendment (I, 430). As to inhabitancy the Senate seated one who, being a citizen of the United States, had been an inhabitant of the State from which he was appointed for less than a year (I, 437). Also one who, while stationed in a State as an army officer had declared his intention of making his home in the State, was admitted by the Senate (I, 438). A Senator who at the time of his election was actually residing in the District of Columbia as an officeholder, but who voted in his old home

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§§ 36-39.

and had no intent of making the District his domicile, was held to be qualified (I, 439).

§ 36. The Vice-President and his vote. ⁴ The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

The right of the Vice-President to vote has been construed to extend to questions relating to the organization of the Senate (V, 5975), as the election of officers of the Senate (V, 5972-5974), or a decision on the title of a claimant to a seat (V, 5976, 5977). The Senate has declined to make a rule relating to the vote of the Vice-President (V, 5974).

§ 37. Choice of President pro tempore and other officers of the Senate. ⁵ The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

§ 38. Senate tries impeachment and convicts by two-thirds vote. ⁶ The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

In 1868, after mature consideration, the Senate overruled the old view of its functions (III, 2057), and decided that it sat for impeachment trials as the Senate and not as a court (III, 2057), and eliminated from its rules all mention of itself as a "high court of impeachment" (III, 2079, 2082).

An anxiety lest the Chief Justice might have a vote in the approaching trial of the President seems to have prompted this action (III, 2057). There was examination of the question of the Chief Justice's power to vote (III, 2098); but the Senate declined to declare his incapacity to vote, and he did in fact give a casting vote on incidental questions (III, 2067). The Senate

§ 39. The presiding officer.

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declined to require that the Chief Justice be sworn when about to preside (III, 2080); but the Chief Justice had the oath administered by an associate justice (III, 2422.)

In impeachments for officers other than the President of the United States the presiding officer of the Senate presides, whether he be Vice-President, the regular President pro tempore (III, 2309, footnote, 2337, 2394) or a special President pro tempore chosen to preside at the trial only (III, 2089, 2477).

Senators elected after the beginning of an impeachment trial are sworn as in the case of other Senators (III, 2375). The quorum of the Senate sitting for an impeachment trial is a quorum of the Senate itself, and not merely a quorum of the Senators sworn for the trial (III, 2063). In 1868, when certain States were without representation, the Senate declined to question its competency to try an impeachment case (III, 2060).

§ 40. Oath, and quorum.

§ 41. Judgment in cases of impeachment.

⁷ Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

There has been discussion as to whether or not the Constitution requires both removal and disqualification on conviction (III, 2397); but in the case of Pickering the Senate decreed only removal (III, 2341). In the case of Humphreys judgment of both removal and disqualification was pronounced (III, 2397). The question on removal and disqualification has been held divisible for the vote (III, 2397).

§ 42. Times, places, and manner of elections of Representatives and Senators.

SECTION 4. ¹ The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the places of chusing Senators.

The relative powers of the Congress and the States under this paragraph have been the subject of much discussion (I, 311, 313, 507, footnote); but Congress has in fact fixed by law the time of elections (I, 508), and has controlled the manner to the extent of prescribing a ballot or voting machine (II, 961). When a State delegated to a municipality the power to regulate the manner of holding an election, a question arose (II, 975). Whether or not a State, in the absence of action by Congress, might make the time of election of Congressmen contingent on the time of the state election (I, 522).

The meaning of the word "legislature" in this clause of the Constitution has been the subject of discussion (II, 856), as to whether or not it means a constitutional convention as well as a legislature in the commonly accepted meaning of the word (I, 524). The House has sworn in Members chosen at an election the time, etc., of which was fixed by the schedule of a constitution adopted on that election day (I, 519, 520, 522). But the House held that where a legislature has been in existence a constitutional convention might not exercise the power (I, 363, 367). It has been argued generally that the legislature derives the power herein discussed from the Federal and not the State Constitution (II, 856, 947), and therefore that the state constitution might not in this respect control the state legislature (II, 1133). The House has sustained this view by its action (I, 525). But where the state constitution fixed a date for an election and the legislature had not acted, although it had the opportunity, the House held the election valid (II, 846).

Decisions of the Supreme Court of the United States:

§ 44. Decisions of the court. Ex parte Siebold, 100 U. S., 371; Ex parte Clarke, 100 U. S., 399; Ex parte Yarbrough, 110 U. S., 651; United States v. Waddell et al., 112 U. S., 76; In re Coy, 127 U. S., 731.

² The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by law appoint a different Day.

§ 45. Annual meeting of Congress. In the later but not the earlier practice (I, 5) the fact that Congress has met once within the year does not make uncertain the constitutional mandate to meet on the first Monday of December (I, 6, 9-11). Early Congresses, convened either by proclamation or law on a day earlier than the constitu-

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tional day, remained in continuous session to a time beyond that day (I, 6, 9-11). But in the later view an existing session ends with the day appointed by the Constitution for the regular annual session (II, 1160). Congress has frequently appointed by law a day for the meeting (I, 4, 5, 10-12, footnote).

§ 46. House the
Judge of elections,
returns, and
qualifications.

SECTION 5. ¹ Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members,

* * *

The House has the same authority to determine the right of a Delegate to his seat that it has in the case of a Member (I, 423). The House may not delegate the duty of judging its elections to another tribunal (I, 608), and the courts of a State have nothing to do with it (II, 959). The House has once examined the relations of this power to the power to expel (I, 469).

As nearly all the laws governing the elections of Representatives in Congress are State laws, questions have often arisen as to the relation of this power of judging to those laws (I, 637). The House decided very early that the certificate of a state executive issued in strict accordance with state law does not prevent examination of the votes by the House and a reversal of the return (I, 637). The House has also held that it is not confined to the conclusions of returns made up in strict conformity to state law, but may examine the votes and correct the returns (I, 774); and the fact that a state law gives canvassers the right to reject votes for fraud and irregularities does not preclude the House from going behind the returns (II, 887).

When the question concerns not the acts of returning officers, but the act of the voter in giving his vote, the House has found more difficulty in determining on the proper exercise of its constitutional power. While the House has always acted on the principle of giving expression to the intent of the voter (I, 575, 639, 641; II, 1090), yet in its later practice it has held that a mandatory state law, even though arbitrary, may cause the rejection of a ballot on which the intent of the voter is plain (II, 1009, 1056, 1077, 1078, 1091).

Where the state courts have upheld a state election law as constitutional the House does not ordinarily question the law (II, 856, 1071). But where there has been no such decision the House, in determining its election cases, passes on the validity of state laws under state constitutions (II, 1011, 1134), and has acted on its decision that they were unconstitutional (II, 1075, 1126).

§ 47. Power of
Judging as related
to state laws as
to returns.

§ 48. Power of
Judging as related
to state laws as
to acts of the voter.

§ 49. Power of
House as related
to constitutionality
of state laws.

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The courts of a State have nothing to do directly with judging the elections, qualifications, and returns of Representatives in Congress (II, 959); but where the highest state court has interpreted the state law the House has concluded that it should generally be governed by this interpretation (II, 645, 731, 1041, 1048). The House is not bound, however, by a decision on an analogous but not the identical question in issue (II, 909); and where the alleged fraud of election judges was in issue, the acquittal of those judges in the courts was held not to be an adjudication binding on the House (II, 1019).

The statutes of the United States provide specific methods for institution of a contest as to the title to a seat in the House (I, 678, 697-706); but the House regards this law as not of absolute binding force, but rather a wholesome rule not to be departed from except for cause (I, 597, 719, 825, 833), and it sometimes by resolution modifies the procedure prescribed by the law (I, 449, 600).

* * * and a Majority of each [House] shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

Out of conditions arising between 1861 and 1891 the rule was established that a majority of the Members chosen and living constituted the quorum required by the Constitution (IV, 2885-2888); but later examination has resulted in a decision confirming in the House of Representatives the construction established in the Senate that a quorum consists of a majority of Senators duly chosen and sworn (I, 630; IV, 2891-2894). So the decision of the House now is that after the House is once organized the quorum consists of a majority of those Members chosen, sworn, and living whose membership has not been terminated by resignation or by the action of the House (IV, 2889, 2890).

§ 50. Effect of interpretation of state election laws by state courts.

§ 51. Laws of Congress not binding on the House in its function of judging its elections.

§ 52. The quorum.

§ 53. Interpretation of the Constitution as to number constituting a quorum.

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For many years the quorum was determined only by noting the numbers of Members voting (IV, 2896, 2897), with the result that Members by refusing to vote could often break a quorum and obstruct the public business (II, 1034; IV, 2895, footnote; V, 5744). But in 1890 Mr. Speaker Reed directed the Clerk to enter on the Journal as part of the record of a yea-and-nay vote names of Members present but not voting, thereby establishing a quorum of record (IV, 2895). This decision, afterwards sustained by the Supreme Court (IV, 2904), established the principle that a quorum present made valid any action by the House, although an actual quorum might not vote (I, 216, footnote; IV, 2932). And thenceforth the point of order as to a quorum was required to be that no quorum was present and not that no quorum had voted (IV, 2917). At the time of the establishment of this principle the Speaker revived the count by the Chair as a method of determining the presence of a quorum at a time when no record vote was ordered (IV, 2909). The Speaker has permitted his count of a quorum to be verified by tellers (IV, 2888), but did not concede it as a right of the House to have tellers under the circumstances (IV, 2916), claiming that the Chair might determine the presence of a quorum in such manner as he should deem accurate and suitable (IV, 2932). The Chair counts all members in sight, whether in the cloak rooms or within the bar (IV, 2970). Later, as the complement to the new view of the quorum, the early theory that the presence of a quorum is as necessary during debate or other business as on a vote was revived (IV, 2935-2949); also, a line of rulings made under the old theory were overruled, and it was established that the point of no quorum might be made after the House had declined to verify a division by tellers or the yeas and nays (IV, 2918-2926).

The absence of a quorum having been disclosed, there must be a quorum of record before the House may proceed to business (IV, 2952, 2953), and the point of no quorum may not be withdrawn after the absence of a quorum has been ascertained and announced by the Chair (IV, 2928-2931). But when an action has been completed, it is too late to make the point of order that a quorum was not present when it was done (IV, 2927). But where action requiring a quorum was taken in the ascertained absence of a quorum by ruling of a Speaker *pro tempore*, the Speaker on the next day ruled that the action was null and void (IV, 2964). But such absence of a quorum should appear from the Journal if a legislative act is to be vacated for such reason (IV, 2962), and where the assumption that a quorum was present when the House acted was uncontradicted by the Journal, it

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was held that this assumption might not be overthrown by expressions of opinion by Members individually (IV, 2961). If a question as to a quorum is raised before the reading of the Journal, a quorum must be ascertained before the reading may begin (IV, 2732, 2733). While messages are received in the absence of a quorum they are not read (IV, 3522; V, 6600, 6650). No motion is in order on the failure of a quorum but the motions to adjourn and for a call of the House (IV, 2950). A call of the House is in order under the Constitution in the absence of other rule (IV, 2981). Those present on a call of the House may prescribe a fine as a condition on which an arrested Member may be discharged (IV, 3013, 3014), but this is rarely done.

At the time of organization the two Houses inform one another of the appearance of the quorum in each, and the two Houses jointly inform the President (I, 198-203). A message from one House that its quorum has appeared is not delivered in the other until a quorum has appeared there also (I, 126). But at the beginning of a second session of a Congress the House proceeded to business, although a quorum had not appeared in the Senate (I, 126). At the beginning of a second session of a Congress unsworn Members-elect were taken into account in ascertaining the presence of a quorum (I, 175). In both Houses the oath has been administered to Members-elect in the absence of a quorum (I, 174, 181, 182), although in one case the Speaker objected to such proceeding (II, 875).

§ 56. Relations of the quorum to organization of the House.

Decisions of the Supreme Court of the United States: *United States v. Ballin*, 144 U. S., 1; *In re Loney*, 134 U. S., 317.

§ 57. Decisions of the court.

² Each House may determine the Rules of its Proceedings, * * *.

§ 58. The House determines its rules.

The power of each House of Representatives to make its own rules may not be impaired or controlled by the rules of a preceding House (I, 187, 210; V, 6002, 6743-6747), or by a law passed by a prior Congress (I, 82, 245; IV, 3298, 3579; V, 6765, 6766). But a law passed by an existing Congress with the concurrence of the House has been recognized by that House as of binding force in matters of procedure (V, 6767, 6768). In exercising its constitutional power to change its rules the House may confine itself within certain limitations (V, 6756); but the attempt of the House to deprive the Speaker of his vote as a Member by a rule was successfully resisted (V, 5966, 5967). While a law of 1789 requires the election of a Clerk before the House proceeds to business, yet the House has held that

§ 59. Power to make rules not impaired by rule or law.

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it may adopt rules before electing a Clerk (I, 245). It has adopted a rule before election of a Speaker (I, 94, 95); but in 1839 was deterred by the law of 1789 and the Constitution from adopting rules before the administration of the oath to Members-elect (I, 140). The earlier theory that an officer might be empowered to administer oaths by a rule of either House has been abandoned in later practice and the authority has been conferred by law (III, 1823, 1824, 2079, 2303, 2479).

Before the adoption of rules the House is governed by general parliamentary law, but the Speakers have been inclined to give weight to the precedents of the House in modifying the usual constructions of that law (V, 6758-6760). The general parliamentary law as understood in the House is founded on Jefferson's Manual and modified by the practice of American legislative assemblies, especially of the House of Representatives (V, 6761-6763), but the provisions of the House's accustomed rules are not necessarily followed (V, 5509, 5604).

The two Houses of Congress adopted in the early years of the Government joint rules to govern their procedure in matters requiring concurrent action; but in 1876 these joint rules were abrogated (IV, 3430; V, 6782-6787). The most useful of their provisions continue to be observed in practice, however (IV, 3430; V, 6592).

* * *

§ 62. Punishment and expulsion of Members. [Each House may] punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.

The two methods of punishment are censure and expulsion. In action for censure the House has discussed as to whether or not the principles of the procedure of the courts should be followed (II, 1255). In one instance, pending consideration of a resolution to censure a Member, the Speaker informed him that he should retire (II, 1366), but this is not usual, and Members against whom resolutions have been pending have participated in debate, either by consent (II, 1656) or without question as to consent (II, 1246, 1253). But after the House had voted censure and the Member has been brought to the bar by the Sergeant-at-Arms to be censured, it was held that he might not then be heard (II, 1259). A resolution of censure should not apply to more than one Member (II, 1240, 1621). Censure is inflicted by the Speaker (II, 1259) and the words are entered in the Journal (II, 1251,

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1656). When Members have resigned pending proceedings for censure, the House has nevertheless adopted the resolutions of censure (II, 1239, 1273, 1275, 1656). Members have been censured for personalities and other disorder in debate (II, 1251, 1253, 1254, 1259), assaults on the floor (II, 1665), for presenting a resolution alleged to be insulting to the House (II, 1246), and for corrupt acts (II, 1274, 1286). In one instance Members were censured for acts before the election of the then existing House (II, 1286).

The power of expulsion has been the subject of much discussion (I, 469, 476, 481; II, 1264, 1265, 1269). In one case a Member-elect who had not taken the oath was expelled (II, 1262), and in another case the power to do this was discussed (I, 476). In one instance the Senate assumed to annul its action of expulsion (II, 1243). The Supreme Court has decided that a judgment of conviction under a disqualifying statute does not compel the Senate to expel (II, 1282). The power of expulsion in its relation to offenses committed before the Members' election has been discussed (II, 1286), and in one case the Judiciary Committee of the House concluded that a Member might not be punished for an offense alleged to have been committed against a preceding Congress (II, 1283); but the House itself declined to express doubt as to its power to expel and proceeded to inflict censure (II, 1286). But this case is exceptional, and in general both Houses have distrusted their power to punish in such cases (II, 1264, 1284, 1285, 1288, 1289). The resignation of the accused Member has always caused a suspension of proceedings for expulsion (II, 1275, 1276, 1279).

The House, in a proceeding for expulsion, declined to give the Member a trial at the bar (II, 1275); but the Senate has permitted counsel to appear at its bar (II, 1263), although it declined to grant a request for a specific statement of charges or compulsory process for witnesses (II, 1264). Members threatened with expulsion have been heard on their own behalf by consent (II, 1273, 1275), or as a matter of right (II, 1269, 1286). In general, there has been discussion as to whether or not the principles of the procedure of the courts should be followed (II, 1264). The Senate once expelled several Senators by a single resolution (II, 1266). Members and Senators have been expelled for treason (II, 1261), for high misdemeanor inconsistent with public duty (II, 1263), for friendship or association with enemies of the Government and absence from their seats (II, 1269, 1270), and for bearing arms against the Government (II, 1267).

A proposition to censure or expel a Member presents a question of privilege (II, 1254, 2648-2651).

§ 64. Punishment by expulsion.

§ 65. Procedure for expulsion.

§ 66. Propositions for punishment entertained as of privilege.

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Decisions of the Supreme Court of the United States:

§ 67. Decisions of the court. *Anderson v. Dunn*, 6 Wh., 204; *Kilbourn v. Thompson*, 103 U. S., 168; *United States v. Ballin*, 144 U. S., 1; *In re Chapman*, 166 U. S., 661.

§ 68. Each House to keep a Journal. ³ Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; * * *

§ 69. The Journal the official record. The Journal and not the Congressional Record is the official record of the proceedings of the House (IV, 2727). Its nature and functions have been the subject of extended discussions (IV, 2730, footnote). The House has fixed its title (IV, 2728). While it ought to be a correct transcript of the proceedings of the House, the House has not insisted on a strict chronological order of entries (IV, 2815). The Journal is dated as of the legislative and not the calendar day (IV, 2746).

§ 70. The Journal a record of proceedings and not of reasons. The Journal records proceedings but not the reasons therefor (IV, 2811) or the circumstances attending (IV, 2812), or the statements or opinions of Members (IV, 2817-2820). Exceptions to this rule are rare (IV, 2808, 2825). Protests have on rare occasions been admitted by the action of the House (IV, 2806, 2807), but the entry of a protest on the Journal may not be demanded by a Member as a matter of right (IV, 2798) and such demand does not present a question of privilege.

§ 71. House's absolute control of entries in the Journal. The House controls its Journal and may decide what are proceedings, even to the extent of omitting things actually done or recording things not done (IV, 2784); and the Speaker entertained a motion to amend it so as to cause it to state what was not the fact, leaving it for the House to decide on the propriety of the act (IV, 2785), holding that he could not prevent a majority of the House from so amending the Journal as to undo an actual transaction (IV, 3091-3093). And only in rare instances the House has nullified proceedings by rescinding the records of them in the Journal (IV, 2787), the House and Senate usually insisting on the accuracy of its Journal (IV, 2783, 2786). In rare instances the House and Senate have rescinded or expunged entries in Journals of preceding Congresses (IV, 2730, footnote, 2790-2793).

The Journal should record the result of every vote and state in general terms the subject of it (IV, 2804); but the result of a vote is recorded in figures only when the yeas and nays are taken (IV, 2827), or when a vote is taken by ballot, it having been determined in latest practice that the Journal should show not only the result but the state of the ballot or ballots (IV, 2832).

It is the uniform practice of the House to approve its Journal for each legislative day (IV, 2731). Where Journals of more than one session remain unapproved, they are taken up for approval in chronological order (IV, 2771-2773). In ordinary practice the Journal is approved by the House without the formal putting of the motion to vote (IV, 2774).

The motion to amend the Journal takes precedence of the motion to approve it (IV, 2760); but the motion to amend may not be admitted after the previous question is demanded on a motion to approve (IV, 2770). An expression of opinion as to a decision of the Chair was held not in order as an amendment to the Journal (IV, 2848). While a proposed correction of the Journal may be recorded in the Journal, yet it is not in order to insert in full in this indirect way what has been denied insertion in the first instance (IV, 2782, 2804, 2805). The earlier practice was otherwise, however (IV, 2801-2803). The Journal of the last day of a session is not approved on the assembling of the next session, and is not ordinarily amended (IV, 2743, 2744).

* * * and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

§ 75. Yeas and nays entered on the Journal.

The yeas and nays may be ordered before the organization of the House (I, 91), but are not taken in Committee of the Whole (IV, 4722, 4723). They are not necessarily taken on the passage of a resolution proposing an amendment to the Constitution (V, 7038, 7039). In the earlier practice of the House it was held that less than a quorum might not order the yeas and nays, but for many years the decisions have been uniformly the other way (V, 6016-6028). Neither is a quorum necessary on a motion to reconsider the vote whereby the yeas and nays are ordered (V, 5693). When a quorum fails on a yea and nay vote it is the duty of the Speaker and the

§ 76. Conditions of ordering yeas and nays.

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House to take notice of that fact (IV, 2953, 2963, 2988). In this case the order for the yeas and nays remains effective whenever the bill again comes before the House (V, 6014, 6015), and it has been held that the question of consideration might not intervene on a succeeding day before the second calling of the yeas and nays (V, 4949).

The yeas and nays may be demanded while the Speaker is announcing the result of a division (V, 6039), while a vote by tellers is being taken (V, 6038), and even after the announcement of the vote if the House has not passed to other business (V, 6040, 6041). But after the Speaker has announced the result of a division on a motion and is in the act of putting the question on another motion it is too late to demand the yeas and nays on the first motion (V, 6042). And it is not in order during the various processes of a division to repeat a demand for the yeas and nays which has once been refused by the House (V, 6029, 6030, 6031). The constitutional right of a Member to demand the yeas and nays may not be overruled as dilatory (V, 5737); but this constitutional right does not exist as to a vote to second a motion when such second is required by the rules (V, 6032-6036). The right to demand the yeas and nays is not waived by the fact that the Member demanding them has just made the point of no quorum and caused the Chair to count the House (V, 6044).

In passing on a demand for the yeas and nays the Speaker need determine only whether one-fifth of those present sustain the demand (V, 6043). After the House, on a vote by tellers, has refused to order the yeas and nays it is too late to demand the count of the negative on an original rising vote (V, 6045).

A motion to reconsider the vote ordering the yeas and nays is in order (V, 6029), and the vote may be reconsidered by a majority. If the House votes to reconsider the yeas and nays may again be ordered by one-fifth (V, 5689-5691). But when the House, having reconsidered, again orders the yeas and nays, a second motion to reconsider may not be made (V, 6037). In one instance it was held that the yeas and nays might be demanded on a motion to reconsider the vote whereby the yeas and nays were ordered (V, 5689), but evidently there must be a limit to this process. The vote whereby the yeas and nays are refused may be reconsidered (V, 5692).

In the general but not the universal practice debate has not been closed by the ordering of the yeas and nays until one Member has responded to the call (V, 6101-6105, 6160, 6161). A motion to adjourn (V, 5366) may be admitted after the yeas and nays are ordered and before the roll call has begun (V, 5366); and a motion to suspend the rules has been entertained

§ 77. Demanding the yeas and nays.

§ 78. Yeas and nays ordered by one-fifth.

§ 79. Reconsideration of the vote ordering the yeas and nays.

§ 80. Effect of an order of the yeas and nays.

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after the yeas and nays have been demanded on another matter (V, 6835). A demand for tellers is not precluded or set aside by the fact that the yeas and nays are demanded and refused (V, 5998).

Decisions of the Supreme Court of the United States:

§ 81. Decisions of the court.

Field v. Clark, 143 U. S., 649; *United States v. Ballin*, 144 U. S., 1; *Twin City Bank v. Nebeker*, 167 U. S., 196; *Wilkes County v. Coler*, 180 U. S., 506.

§ 82. Adjournment for more than three days. ⁴ Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

The House of Representatives in adjourning for not "more than three days" must take into the count either the day of adjourning or the day of meeting (V, 6673, 6674), and Sunday is not taken into account in making this computation (V, 6673, 6674). The House has by standing order provided that it should meet on two days only of each week instead of daily (V, 6675). Before the election of Speaker the House has adjourned for more than one day (I, 89, 221).

§ 83. Adjournment of the House within the three-day limit. Congress is adjourned for more than three days by a concurrent resolution (IV, 4031, footnote). When it adjourns in this way, but not to or beyond the day fixed by Constitution or law for the next regular session to begin, the session is not thereby necessarily terminated (V, 6676, 6677).

§ 84. Resolutions for adjournment of the two Houses. Neither House has ever adjourned for more than three days by itself with the consent of the other, but resolutions have been offered for the accomplishment of that end (V, 6702, 6703). On one occasion the two Houses provided for an adjournment to a certain day, with a provision that if there should be no quorum present on that day the session should terminate (V, 6686). A concurrent resolution to provide for adjournment for more than three days is offered in the House as a matter of privilege (V, 6701-6706).

SECTION 6. ¹ The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States.

* * *

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This compensation has been ascertained by law at various times, the present rate being fixed at \$7,500 a year for Members and Delegates, and \$12,000 a year for the Speaker, with mileage at the rate of 20 cents per mile estimated by the nearest route usually traveled in going to and returning from each regular session (II, 1159, 1160). The statutes also provide for deductions from the pay of Members and Delegates who are absent from the sessions of the House for reasons other than illness of themselves and families, or who retire before the end of the Congress (IV, 3011, footnote). The law as to deductions has been held to apply only to Members who have taken the oath (II, 1154). Members and Delegates are paid monthly on certificate of the Speaker during sessions and of the Clerk during recesses. The Sergeant-at-Arms, or in case of his disability, the Treasurer of the United States, disburses the pay of Members (II, 1148).

Questions have arisen frequently as to compensation of Members, especially in cases of Members elected to fill vacancies (I, 500; II, 1155) and where there have been questions as to incompatible offices (I, 500) or titles to seats (II, 1206).

Each Member and Delegate receives \$125 annually for stationery and the Clerk maintains a stationery room for supplying articles (II, 1161, 1162). Also each Member and Delegate receives \$1,500 annually for hire of clerks necessarily employed by him for official work (II, 1151).

* * *

§ 89. Privilege of Members from arrest. They [the Senators and Representatives] shall in all Cases, except Treason, Felony, and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same;

* * *

The word "felony" in this provision has been interpreted not to refer to a delinquency in a matter of debt (II, 2676), and "treason, felony, and breach of the peace" have been construed to mean all indictable crimes (III, 2673). The courts have discussed and sustained the privilege of the Member in going to and returning from the session (III, 2674); and

§ 90. Assertions of privilege of Members by the House.

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where a person assaulted a Member on his way to the House, although at a place distant therefrom, the House arrested him on warrant of the Speaker, arraigned him at the bar and committed him (II, 1626, 1628). Other assaults under these circumstances have been treated as breaches of privilege (II, 1645). Where a Member had been arrested and detained under mesme process in a civil suit during a recess of Congress, the House decided that he was entitled to discharge on the assembling of Congress, and liberated him and restored him to his seat by the hands of its own officer (III, 2676).

§ 91. Members privileged from being questioned for speech or debate.

* * * and for any Speech or Debate in either House, they [the Senators and Representatives] shall not be questioned in any other place.

This privilege as to "any speech or debate" applies generally to "things done in a session of the House by one of its Members in relation to the business before it" (II, 1655; III, 2675). For assaulting a Member for words spoken in debate, Samuel Houston, not a Member, was arrested, tried, and censured by the House (II, 1616-1619). Where Members have assaulted other Members for words spoken in debate (II, 1656) or proceeded by duel (II, 1644), or demanded explanation in a hostile manner (II, 1644) the House has considered the cases as of privilege. A communication addressed to the House by an official in an Executive Department calling in question words uttered by a Member in debate was criticised as a breach of privilege and withdrawn (III, 2684). An explanation having been demanded of a Member by a person not a Member for a question asked of the latter when a witness before the House, the matter was considered but not pressed as a breach of privilege (III, 2681). A letter from a person supposed to have been assailed by a Member in debate, asking properly and without menace if the speech was correctly reported, was held to involve no question of privilege (III, 2682). Unless it be clear that a Member has been questioned for words spoken in debate, the House declines to act (II, 1620; III, 2680).

Decisions of the Supreme Court of the United States:

§ 92. Decisions of the court.

Cox v. M'Clenachan, 3 Dall., 478; Kilbourn v. Thompson, 103 U. S., 168; Williamson v. United States, 207 U. S., 425.

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§§ 93-95.

² No Senator or Representative shall, during the Time for which he was elected, be appointed to any Civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time; * * *.

In a few cases questions have arisen under this paragraph (I, 506, footnote).

* * * and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

The meaning of the word "office" as used in this paragraph has been discussed (I, 185, 417, 478, 493; II, 993), as has also the general subject of incompatible offices (I, 563).

The Judiciary Committee has concluded that members of commissions created by law to investigate and report, but having no legislative, executive, or judicial powers, and visitors to academies, regents, directors, and trustees of public institutions, appointed under the law by the Speaker, are not officers within the meaning of the Constitution (I, 493). The House has also distinguished between the performance of paid services for the Executive (I, 495), like temporary service as assistant United States attorney (II, 993), and the acceptance of an incompatible office. The House has declined to hold that a contractor under the Government is constitutionally disqualified to serve as a Member (I, 496). But the House, or its committees, have found disqualified a Member who was appointed a militia officer in the District of Columbia (I, 486) and Members who have accepted commissions in the Army (I, 491, 492, 494). But the Judiciary Committee has expressed the opinion that persons on the retired list of the Army do not hold office under the United States in the constitutional sense (I, 494). A Member-elect has continued to act as governor of a State after the assembling of the Congress to which he was elected (I, 503).

§ 95. As to what are incompatible offices.

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§§ 96-98.

After a careful consideration of the status of a Member-elect, the House decided that such an one was not affected by the constitutional requirement (I, 499), the theory being advanced that the status of the Member-elect is distinguished from the status of the Member who has qualified (I, 184). And a Member-elect who continued in an office after his election but resigned before taking his seat, was held entitled to the seat (I, 497, 498). But when a Member-elect held an incompatible office after the meeting of Congress he was held to have disqualified himself (I, 492). In other words, the Member-elect may defer until the meeting of Congress his choice between the seat and an incompatible office (I, 492).

The House has manifestly leaned to the idea that a contestant holding an incompatible office need not make his election until the House has declared him entitled to the seat (I, 505). Although a contestant had accepted and held a State office in violation of the state constitution, if he were really elected a Congressman, the House did not treat his contest as abated (II, 1003). Where a Member had been appointed to an incompatible office a contestant not found to be elected was not admitted to fill the vacancy (I, 807).

Where a Member has accepted an incompatible office, the House has assumed or declared the seat vacant (I, 501, 502). In the cases of Baker and Yell, the Elections Committee concluded that the acceptance of a commission as an officer of volunteers in the national army vacated the seat of a Member (I, 488), and in another similar case the Member was held to have forfeited his right to a seat (I, 490). The House has seated a person bearing regular credentials on ascertaining that his predecessor in the same Congress had accepted a military office (I, 572). But usually the House by resolution formally declares the seat vacant (I, 488, 492). A Member-elect may defer until the meeting of Congress his choice between the seat and an incompatible office (I, 492). But when he retains the incompatible office and does not qualify, a vacancy has been held to exist (I, 500). A resolution excluding a Member who has accepted an incompatible office may be agreed to by a majority vote (I, 490). A Member charged with acceptance of an incompatible office was heard in his own behalf during the debate (I, 486).

SECTION 7. ¹ All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

§ 99. Bills raising revenue to originate in the House.

This provision has been the subject of much discussion (II, 1488, 1494). In the earlier days the practice was not always correct (II, 1484); but in later years the House has insisted on its prerogative and the Senate has often shown reluctance to infringe thereon (II, 1482, 1483, 1493). In several instances, however, the subject has been matter of contention, conference (II, 1487, 1488), and final disagreement (II, 1485, 1487, 1488). Sometimes, however, when the House has questioned an invasion of prerogative, the Senate has receded (II, 1486, 1493). The disagreements have been especially vigorous over the right of the Senate to concur with amendments (II, 1489), and while the Senate has acquiesced in the sole right of the House to originate revenue bills, it has at the same time held to a broad power of amendment (II, 1497-1499). The House has frequently challenged the Senate on this point (II, 1481, 1491, 1496). When the House has conceived that its prerogative has been invaded, it has ordered the bill to be returned to the Senate (II, 1493-1495) or declined to proceed further with it (II, 1485). In one instance a revenue question was not objected to until the stage of conference (II, 1492).

Decisions of the Supreme Court of the United States:

§ 100. Decisions of the court. *Field v. Clark*, 143 U. S., 649; *Twin City Bank v. Nebeker*, 167 U. S., 196; *Millard v. Roberts*, 202 U. S., 429.

² Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of

§ 101. Approval and disapproval of bills by the President.

that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. * * *

The approval of a bill by the President of the United States is valid only with his signature (IV, 3490). At the close of a Congress, when the two Houses prolong their sessions into the forenoon of March 4, the approvals have been dated on the prior legislative day, as the legislative portion of March 4 belongs to the term of the new Congress. In one instance, however, bills signed on the forenoon of March 4 were dated as of that day with the hour and minute of approval given with the date (IV, 3489). The act of President Tyler in filing with a bill an exposition of his reasons for signing it was examined and severely criticised by a committee of the House (IV, 3492); and in 1842 a committee of the House discussed the act of President Jackson in writing above his signature of approval a memorandum of his construction of the bill (IV, 3492). But where the President has accompanied his message announcing the approval with a statement of his reasons there has been no question in the House (IV, 3491). The statutes require that bills signed by the President shall be received by the Secretary of State (IV, 3485) and deposited in his office (IV, 3429).

Notice of the signature of a bill by the President is sent by message to the House in which it originated and that House informs the other (IV, 3429). But this notice is not necessary to the validity of the act (IV, 3495). Sometimes, at the close of a Congress the President informs the House of such bills as he has approved and of such as he has allowed to fail (IV, 3499-3502). In one instance he communicated his omission to sign a bill through the committee appointed to notify him that Congress was about to adjourn (IV, 3504). A bill that had not actually passed having been signed by the President, he disregarded it and a new bill was passed (IV, 3498). Messages of the President giving notice of bills approved are entered in the Journal and published in the Congressional Record (V, 6593).

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§§ 104-106.

A message withholding approval of a bill, called a veto message, is sent to the House in which the bill originated; but it has been held that such a message may not be returned to the President on his request (IV, 3521). A vetoed bill received in the House by way of the Senate is considered as if received directly from the President and supersedes the regular order of business (IV, 3537). A veto message may not be read in the absence of a quorum, even though the House be about to adjourn sine die (IV, 3522); but the message may be read and acted on at the next session of the same Congress (IV, 3522). When the President has been prevented by adjournment from returning a bill with his objections he has sometimes at the next session communicated his reasons for not approving (V, 6618-6620).

It is the usual but not invariable rule that a bill returned with the objections of the President shall be voted on at once (IV, 3534-3536). A motion to refer a vetoed bill, either with or without the message, has been held allowable within the constitutional mandate that the House "shall proceed to reconsider" (IV, 3550). But while the ordinary motion to refer may be applied to a vetoed bill, it is not in order to move to reconsider it pending the demand for the previous question or after it is ordered (IV, 3551). A vetoed bill having been rejected by the House, the message was referred (IV, 3552). Committees to which vetoed bills have been referred, have sometimes neglected to report (IV, 3523, 3550, footnotes). A vetoed bill may be laid on the table (IV, 3549), but it is still highly privileged and a motion to take it from the table is in order at any time (IV, 3549). Also a motion to discharge a committee from the consideration of such a bill is privileged (IV, 3532). While a vetoed bill is always privileged, the same is not true of a bill reported in lieu of it (IV, 3531).

If two-thirds of the House to which a bill is returned with the President's objections agree to pass it, and then two-thirds of the other House also agree, it becomes a law (IV, 3520).

The two-thirds vote required to pass the bill is two-thirds of the Members present and not two-thirds of the total membership of the House (IV, 3537, 3538, footnote). Also ruled by Speaker Clark, on May 13, 1912—Sixty-second Congress, second session—on constitutional amendment providing for election of United States Senators by direct vote of the people. On wool bill, on passage over President's veto, held only Members voting considered in determining whether two-thirds voted in the affirmative. August 13, 1912, second session, Sixty-second Congress (p. 10847), Speaker Clark ruled as follows: The Chair agrees with the gentleman. There are 174 Members voting to pass the bill over the President's veto. There are 80 Members voting against it. There are 10 present who did not vote at all. Two-thirds having voted in the affirmative, the Chair is of the opinion that it is those Members only who vote that are to be considered, and therefore that this bill is passed over the President's veto. The motion to reconsider may not be applied to the vote (V, 5644). It is the practice

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§§ 107-109.

for one House to inform the other by message of its decision that a bill returned with the objections of the President shall not pass (IV, 3539-3541). A bill passed notwithstanding the objections of the President is sent by the presiding officer of the House which last acts on it to the Secretary of State for preservation (IV, 3524), and the Secretary of State receives it and deposits it in his office (IV, 3485).

A bill incorrectly enrolled has been recalled from the President who erased his signature (IV, 3506). Bills sent to the President but not yet signed by him are sometimes recalled by concurrent resolution of the two Houses (IV, 3507-3509), and amended; but this proceeding is regarded as irregular (IV, 3510-3518). An error in an enrolled bill that has gone to the President may also be corrected by a supplementary joint resolution (IV, 3519).

*** * *** If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

Ayes and nays required to pass bill over President's veto. (Vol. IV, pp. 2726 and 3520.)

The President may sign a bill within ten days, even though the House may in the meantime have adjourned for a recess (IV, 3493, 3494, 3496), and a bill so signed during a recess (as distinguished from sine die adjournment) has been held to be valid by the Supreme Court (IV, 3495). There is much doubt, however, as to whether a bill which remains with the President ten days without his signature, Congress having in the meanwhile adjourned for a recess, becomes a law (IV, 3493). There is also a question as to the return of a vetoed bill, Congress being in recess beyond the limit of ten days (IV, 3496). In one instance the President signed a bill after a final adjournment of Congress but within ten days. This, however, gave rise to grave doubts and resulted in an adverse report by a House committee (IV, 3497).

Decisions of the Supreme Court of the United States:

§ 109. Decisions of the court. Field *v.* Clark, 143 U. S., 649; United States *v.* Ballin, 144 U. S., 1; Twin City Bank *v.* Nebeker, 167 U. S., 196; La Abra Silver Mining Co. *v.* United States, 175 U. S., 423; Wilkes County *v.* Coler, 180 U. S., 506.

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§§ 110-113.

§ 110. As to presentation of orders and resolutions for approval.

³ Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

It has been settled conclusively that a joint resolution proposing an amendment to the Constitution should not be presented to the President for his approval (V, 7040). Although the requirement of the Constitution seems specific, the practice of Congress has been to present to the President for approval only such concurrent resolutions as are legislative in effect (IV, 3483, 3484).

Decisions of the Supreme Court of the United States:

§ 111. Decisions of the court.

Field *v.* Clark, 143 U. S., 649; United States *v.* Ballin, 144 U. S., 1; Fourteen Diamond Rings *v.* United States, 183 U. S., 176.

§ 112. The revenue power.

SECTION 8. The Congress shall have Power ¹ To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts, and Excises shall be uniform throughout the United States;

Decisions of the Supreme Court of the United States:

§ 113. Decisions of the court.

Hylton *v.* United States, 3 Dall., 171; McCulloch *v.* State of Maryland, 4 Wh., 316; Loughborough *v.* Blake, 5 Wh., 317; Osborn *v.* Bank of the United States, 9 Wh., 738; Weston et al. *v.* City Council of Charleston, 2 Pet., 449; Dob-

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§§ 114-116.

bins v. The Commissioners of Erie County, 16 Pet., 435; *License Cases*, 5 How., 504; *Cooley v. Board of Wardens of Port of Philadelphia et al.*, 12 How., 299; *McGuire v. The Commonwealth*, 3 Wall., 387; *Van Allen v. The Assessors*, 3 Wall., 573; *Bradley v. The People*, 4 Wall., 459; *License Tax Cases*, 5 Wall., 462; *Pervear v. The Commonwealth*, 5 Wall., 475; *Woodruff v. Parham*, 8 Wall., 123; *Hinson v. Lott*, 8 Wall., 148; *Veazie Bank v. Fenno*, 8 Wall., 533; *The Collector v. Day*, 11 Wall., 113; *United States v. Singer*, 15 Wall., 111; *State tax on foreign-held bonds*, 15 Wall., 300; *United States v. Railroad Company*, 17 Wall., 322; *Railroad Company v. Peniston*, 18 Wall., 5; *Scholey v. Rew*, 23 Wall., 331; *National Bank v. United States*, 101 U. S., 1; *Springer v. United States*, 102 U. S., 586; *Legal Tender Case*, 110 U. S., 421; *Head Money Cases*, 112 U. S., 580; *Van Brocklin v. State of Tennessee*, 117 U. S., 151; *Field v. Clark*, 143 U. S., 649; *New York, Lake Erie and Western R. R. v. Pennsylvania*, 153 U. S., 628; *Pollock v. Farmers' Loan and Trust Co. (Income Tax Case)*, 157 U. S., 429; *United States v. Realty Company*, 163 U. S., 427; *In re Kollock*, 165 U. S., 526; *Nichols v. Ames*, 173 U. S., 509; *Knowlton v. Moore*, 178 U. S., 41; *De Lima v. Bidwell*, 182 U. S., 1; *Dooley v. United States*, 182 U. S., 222; *Fourteen Diamond Rings v. United States*, 183 U. S., 176; *Felsenheld v. United States*, 186 U. S., 126; *Thomas v. United States*, 192 U. S., 363; *Binns v. United States*, 194 U. S., 486; *South Carolina v. United States*, 199 U. S., 437; *Flaherty v. Hanson*, 215 U. S., 515.

§ 114. The borrowing power.

² To borrow Money on the credit of the United States;

Decisions of the Supreme Court of the United States:

§ 115. Decisions of the court.

McCulloch v. The State of Maryland, 4 Wh., 316; *Weston et al. v. The City Council of Charleston*, 2 Pet., 449; *Bank of Commerce v. New York City*, 2 Black, 620; *Bank Tax Cases*, 2 Wall., 200; *The Bank v. The Mayor*, 7 Wall., 16; *Bank v. Supervisors*, 7 Wall., 26; *Hepburn v. Griswold*, 8 Wall., 603; *National Bank v. Commonwealth*, 9 Wall., 353; *Parker v. Davis*, 12 Wall., 457; *Legal Tender Case*, 110 U. S., 421; *Home Insurance Company v. New York*, 134 U. S., 594; *Home Savings Bank v. Des Moines*, 205 U. S., 503.

³ To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

§ 116. Power over commerce.

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§ 117.

Recent decisions of the Supreme Court of the United States:

Louisville, etc., *Ferry Co. v. Kentucky*, 188 U. S., 385; *United States v. Lynah*, 188 U. S., 445; *Cummings v. Chicago*, 188 U. S., 410; *The Roanoke*, 189 U. S., 185; *Montgomery v. Portland*, 190 U. S., 89; *Patterson v. Bark Eudora*, 190 U. S., 169; *Allen v. Pullman Co.*, 191 U. S., 171; *Pennsylvania R. R. Co. v. Knight*, 192 U. S., 21; *Postal Telegraph-Cable Co. v. Taylor*, 192 U. S., 64; *Crossman v. Lurman*, 192 U. S., 189; *St. Clair County v. Interstate Transfer Co.*, 192 U. S., 454; *Buttfield v. Stranahan*, 192 U. S., 470; *American Steel & Wire Co. v. Speed*, 192 U. S., 500; *Northern Securities Co. v. United States*, 193 U. S., 197; *Montague & Co. v. Lowry*, 193 U. S., 38; *Field v. Barber Asphalt Co.*, 194 U. S., 618; *Minnesota v. Northern Securities Co.*, 194 U. S., 48; *Olsen v. Smith*, 195 U. S., 332; *Western Union Telegraph Co. v. Pennsylvania R. R.*, 195 U. S., 540; *Central of Georgia Railway Co. v. Murphey*, 196 U. S., 194; *American Express Co. v. Iowa*, 196 U. S., 133; *Cook v. Marshall County*, 196 U. S., 261; *Matter of Heff (Indian)*, 197 U. S., 488; *Foppiano v. Speed*, 199 U. S., 501; *Houston & Texas Central Railroad v. Mayes*, 201 U. S., 321; *McLean v. Denver & Rio Grande R. R.*, 203 U. S., 38; *Rearick v. Pennsylvania*, 203 U. S., 507; *Mississippi R. R. Comm. v. Illinois Central R. R.*, 203 U. S., 335; *Martin v. Pittsburg & Lake Erie R. R.*, 203 U. S., 284; *Hatch v. Reardon*, 204 U. S., 152; *Wilson v. Shaw*, 204 U. S., 24; *Union Bridge Co. v. U. S.*, 204 U. S., 364; *Lee v. New Jersey*, 207 U. S., 67; *Atlantic Coast Line v. Wharton*, 207 U. S., 328; *Employers' Liability Cases*, 207 U. S., 463; *Dick v. U. S.*, 208 U. S., 340; *Darnell & Son v. Memphis*, 208 U. S., 113; *Adair v. U. S.*, 208 U. S., 161; *Burke v. Wells*, 208 U. S., 14; *General Oil Co. v. Crain*, 209 U. S., 211; *Ware & Leland v. Mobile County*, 209 U. S., 405; *Asbell v. Kansas*, 209 U. S., 251; *Galveston, Harrisburg, etc., Railway Co. v. Texas*, 210 U. S., 217; *Silz v. Hesterberg*, 211 U. S., 31; *United States v. Delaware & Hudson Co.*, 213 U. S., 366; *Adams Express Co. v. Kentucky*, 214 U. S., 218; *District of Columbia v. Brooke*, 214 U. S., 138; *El Paso & Northeastern Ry. Co. v. Gutierrez*, 215 U. S., 87; *Western Union Telegraph v. Kansas*, 216 U. S., 1; *Pullman Co. v. Kansas*, 216 U. S., 56; *Atlantic Coast Line Co. v. Mazursky*, 216 U. S., 122; *Ludwig v. Western Union Telegraph Co.*, 216 U. S., 146; *Missouri Pacific Ry. Co.*, 216 U. S., 262; *Monongahela Bridge Co. v. United States*, 216 U. S., 177; *Southern Ry. Co. v. King*, 217 U. S., 524; *St. Louis S. W. Ry. v. Arkansas*, 217 U. S., 136; *Standard Oil Co. v. Tennessee*, 217 U. S., 413; *International Textbook Co. v. Pigg*, 217 U. S., 91; *Brown-Forman Co. v. Kentucky*, 217 U. S., 563.

- ⁴ To establish an uniform Rule of Naturalization,¹
and uniform Laws on the subject of
Bankruptcies throughout the United
States;²

§ 118. Naturaliza-
tion and
bankruptcy.

Decisions of the Supreme Court of the United States:

- § 119. Decisions of
the court. ² *Sturges v. Crowninshield*, 4 Wh., 122; ² *McMillan v. McNeil*, 4 Wh., 209; ² *Farmers and Mechanics' Bank, Pennsylvania, v. Smith*, 6 Wh., 131; ² *Ogden v. Saunders*, 12 Wh., 213; ² *Boyle v. Zacharie and Turner*, 6 Pet., 348; ¹ *Gassies v. Ballou*, 6 Pet., 761; ² *Beers et al. v. Haughton*, 9 Pet., 329; ² *Suydam et al. v. Broadnax*, 14 Pet., 67; ² *Cook v. Moffat et al.*, 5 How., 295; ¹ *Dred Scott v. Sanford*, 19 How., 393; ¹ *Nishimura Ekiu v. The United States*, 142 U. S., 651; ² *Hanover National Bank v. Moyses*, 186 U. S., 181; ¹ *Holmgren v. United States*, 217 U. S., 509.

- ⁵ To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

§ 120. Coinage,
weights, and
measures.

Decisions of the Supreme Court of the United States:

- § 121. Decisions of
the court. *Briscoe v. The Bank of the Commonwealth of Kentucky*, 11 Pet., 257; *Fox v. The State of Ohio*, 5 How., 410; *United States v. Marigold*, 9 How., 560.

- ⁶ To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

§ 122. Counter-
feiting.

Decisions of the Supreme Court of the United States:

- § 123. Decisions of
the court. *Fox v. The State of Ohio*, 5 How., 410; *United States v. Marigold*, 9 How., 560.

- ⁷ To establish Post Offices and post Roads;

§ 124. Post-office
and post-roads.

Decisions of the Supreme Court of the United States:

- § 125. Decisions of
the court. *State of Pennsylvania v. The Wheeling and Belmont Bridge Company*, 18 How., 421; *Pensacola Telegraph Co. v. Western Union Telegraph Co.*, 96 U. S., 1; *Ex Parte Jackson*, 96 U. S., 727; *In re Rapier*, 143 U. S., 110; *Horner v. United*

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§§ 126-132.

States, 143 U. S., 207; *In re Debs*, Petitioner, 158 U. S., 564; *Illinois Central Railroad Co. v. Illinois*, 163 U. S., 142; *Gladson v. Minnesota*, 166 U. S., 427; *Public Clearing House v. Coyne*, 194 U. S., 497; *Western Union Telegraph Co. v. Pennsylvania R. R. Co.*, 185 U. S., 540; *Martin v. Pittsburg & Lake Erie R. R.*, 203 U. S., 284.

⁸ To promote the Progress of Science and useful

§ 126. Patents and copyrights. Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

Decisions of the Supreme Court of the United States:

§ 127. Decisions of the court. *Grant et al. v. Raymond*, 6 Pet., 218; *Wheaton et al. v. Peters et al.*, 8 Pet., 591; *Trade-mark Cases*, 100 U. S., 82; *Burrow Giles Lithographic Co. v. Sarony*, 111 U. S., 53; *United States v. Duell*, 172 U. S., 576; *Bobbs-Merrill Co. v. Straus*, 210 U. S., 339.

§ 128. Inferior courts.

⁹ To constitute Tribunals inferior to the supreme Court;

§ 129. Piracies and offenses against law of nations.

¹⁰ To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Na-

tions;

Decisions of the Supreme Court of the United States:

§ 130. Decisions of the court. *United States v. Palmer*, 3 Wh., 610; *United States v. Wiltberger*, 5 Wh., 76; *United States v. Smith*, 5 Wh., 153; *United States v. Pirates*, 5 Wh., 184; *United States v. Arjona*, 120 U. S., 479.

§ 131. Declarations of war and maritime operations.

¹¹ To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and

Water;

Decisions of the Supreme Court of the United States:

§ 132. Decisions of the court. *Brown v. United States*, 8 Cr., 110; *American Insurance Company et al. v. Canter* (356 bales cotton), 1 Pet., 511; *Mrs. Alexander's cotton*, 2 Wall., 404; *Miller v. United States*, 11 Wall., 268; *Tyler v. Defrees*, 11 Wall., 331;

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§§ 133-140.

Stewart v. Kahn, 11 Wall., 493; *Hamilton v. Dillon*, 21 Wall., 73; *Lamar, ex., v. Browne et al.*, 92 U. S., 187; *Mayfield v. Richards*, 115 U. S., 137; *The Chinese Exclusion Cases*, 130 U. S., 581; *Mormon Church v. United States*, 136 U. S., 1; *Nishimura Ekiu v. The United States*, 142 U. S., 651.

§ 133. Raising and support of armies. ¹² To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

Decisions of the Supreme Court of the United States:

§ 134. Decisions of the court. *Crandall v. State of Nevada*, 6 Wall., 35; *Nishimura Ekiu v. The United States*, 142 U. S., 651.

§ 135. Provisions for a navy. ¹³ To provide and maintain a Navy:

Decisions of the Supreme Court of the United States:

§ 136. Decisions of the court. *United States v. Bevans*, 3 Wh., 336; *Dynes v. Hoover*, 20 How., 65.

§ 137. Land and naval forces. ¹⁴ To make Rules for the Government and Regulation of the land and naval Forces;

¹⁵ To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

§ 138. Calling out the militia.

Decisions of the Supreme Court of the United States:

§ 139. Decisions of the court. *Houston v. Moore*, 5 Wh., 1; *Martin v. Mott*, 12 Wh., 19; *Luther v. Borden*, 7 How., 1; *Crandall v. State of Nevada*, 6 Wall., 35; *Texas v. White*, 7 Wall., 700.

¹⁶ To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers,

§ 140. Power over the militia.

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§§ 141-143.

and the Authority of training the Militia according to the discipline prescribed by Congress;

Decisions of the Supreme Court of the United States:

§ 141. Decisions of the court. *Houston v. Moore*, 5 Wh., 1; *Martin v. Mott*, 12 Wh., 19; *Luther v. Borden*, 7 How., 1; *Presser v. Illinois*, 116 U. S., 252.

§ 142. Power over territory of the United States. ¹⁷ To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Session of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the erection of Forts, Magazines, and Arsenals, dock-Yards, and other needful Buildings;—And

Decisions of the Supreme Court of the United States:

§ 143. Decisions of the court. *Hepburn et al. v. Ellzey*, 2 Cr., 444; *Loughborough v. Blake*, 5 Wh., 317; *Cohens v. Virginia*, 6 Wh., 264; *American Insurance Company v. Canter* (356 bales cotton), 1 Pet., 511; *Kendall, Postmaster-General, v. The United States*, 12 Pet., 524; *United States v. Dewitt*, 9 Wall., 41; *Dunphy v. Kleinsmith et al.*, 11 Wall., 610; *Willard v. Presbury*, 14 Wall., 676; *Kohl et al. v. United States*, 91 U. S., 367; *Phillips v. Payne*, 92 U. S., 130; *United States v. Fox*, 94 U. S., 315; *Fort Leavenworth R. R. Co. v. Lowe*, 114 U. S., 525; *Gibbons v. District of Columbia*, 116 U. S., 404; *Van Brocklin v. State of Tennessee*, 117 U. S., 151; *Stoutenburgh v. Hennick*, 129 U. S., 141; *Geofroy v. Riggs*, 133 U. S., 258; *Benson v. United States*, 146 U. S., 325; *Shoemaker v. United States*, 147 U. S., 282; *Chappell v. United States*, 160 U. S., 499; *Ohio v. Thomas*, 173 U. S., 276; *Wight v. Davidson*, 181 U. S., 371; *Battle v. United States*, 209 U. S., 36; *Western Union Telegraph Co. v. Chiles*, 214 U. S., 274; *El Paso & Northeastern Ry. Co. v. Gutierrez*, 215 U. S., 87.

¹⁸ To make all Laws which shall be necessary and

§ 144. General legislative power.

proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Decisions of the Supreme Court of the United States:

§ 145. Decisions of the court.

McCulloch v. The State of Maryland, 4 Wh., 316; *Wayman v. Southard*, 10 Wh., 1; *Bank of United States v. Halstead*, 10 Wh., 51; *Hepburn v. Griswold*, 8 Wall., 603; *National Bank v. Commonwealth*, 9 Wall., 353; *Thomson v. Pacific Railroad*, 9 Wall., 579; *Parker v. Davis*, 12 Wall., 457; *Railroad Company v. Johnson*, 15 Wall., 195; *Railroad Company v. Peniston*, 18 Wall., 5; *United States v. Fox*, 95 U. S., 670; *United States v. Hall*, 98 U. S., 343; *Tennessee v. Davis*, 100 U. S., 257; *Ex parte Curtis*, 106 U. S., 371; *Legal Tender case*, 110 U. S., 421; *Stoutenburgh v. Hennick*, 129 U. S., 141; *The Chinese Exclusion Case*, 130 U. S., 581; *Crenshaw v. United States*, 134 U. S., 99; *Cherokee Nation v. Southern Kansas R. R.*, 135 U. S., 641; *Nishimura Ekiu v. The United States*, 142 U. S., 651; *Field v. Clark*, 143 U. S., 649; *Logan v. United States*, 144 U. S., 263; *Fong Yue Ting v. United States*, 149 U. S., 698; *Lees v. United States*, 150 U. S., 476; *Interstate Commerce Commission v. Brimson*, 154 U. S., 447; *Clune v. United States*, 159 U. S., 590; *Motes v. United States*, 178 U. S., 458; *Buttfield v. Stranahan*, 192 U. S., 470.

SECTION 9. ¹ The Migration or Importation of such

§ 146. Migration or Importation of persons.

Persons as any or the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

Decision of the Supreme Court of the United States:

§ 147. Decision of the court.

Dred Scott v. Sanford, 19 How., 393; *Oceanic Navigation Co. v. Stranahan*, 214 U. S., 320.

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§§ 148-152.

² The Privilege of the Writ of Habeas Corpus shall

§ 148. Writ of habeas corpus.

not be suspended, unless when in Cases of Rebellion or Invasion the public

Safety may require it.

Decisions of the Supreme Court of the United States:

§ 149. Decisions of the court.

United States *v.* Hamilton, 3 Dall., 17; Hepburn *et al. v.* Ellzey, 2 Cr., 445; *Ex parte* Bollman and Swartwout, 4 Cr., 75; *Ex parte* Kearney, 7 Wh., 38; *Ex parte* Tobias Watkins, 3 Pet., 192; *Ex parte* Milburn, 9 Pet., 704; Holmes *v.* Jennison *et al.*, 14 Pet., 540; *Ex parte* Dorr, 3 How., 103; Luther *v.* Borden, 7 How., 1; Ableman *v.* Booth and United States *v.* Booth, 21 How., 506; *Ex parte* Vallandigham, 1 Wall., 243; *Ex parte* Mulligan, 4 Wall., 2; *Ex parte* McCardle, 7 Wall., 506; *Ex parte* Yerger, 8 Wall., 85; Tarble's case, 13 Wall., 397; *Ex parte* Lange, 18 Wall., 163; *Ex parte* Parks, 93 U. S., 18; *Ex parte* Karstendick, 93 U. S., 396; *Ex parte* Virginia, 100 U. S., 339; *In re* Neagle, 135 U. S., 1; *In re* Frederick, 149 U. S., 70; United States *v.* Sing Tuck, 194 U. S., 161; United States *v.* Ju Toy, 198 U. S., 253; Carfer *v.* Caldwell, 200 U. S., 293; McNichols *v.* Pease, 207 U. S., 100.

§ 150. Bills of attainder and ex post facto laws.

³ No Bill of Attainder or ex post facto Law shall be passed.

Decisions of the Supreme Court of the United States:

§ 151. Decisions of the court.

Fletcher *v.* Peck, 6 Cr., 87; Ogden *v.* Saunders, 12 Wh., 213; Watson *et al. v.* Mercer, 8 Pet., 88; Carpenter *et al. v.* Commonwealth of Pennsylvania, 17 How., 456; Locke *v.* New Orleans, 4 Wall., 172; Cummings *v.* The State of Missouri, 4 Wall., 277; *Ex parte* Garland, 4 Wall., 333; Drehman *v.* Stifle, 8 Wall., 595; Klinger *v.* State of Missouri, 13 Wall., 257; Pierce *v.* Carskadon, 16 Wall., 234; Hopt *v.* Utah, 110 U. S., 547; Cook *v.* United States, 138 U. S., 157; Neely *v.* Henkel (No. 1), 180 U. S., 109; Southwestern Coal Co. *v.* McBride, 185 U. S., 499; Delamater *v.* South Dakota, 205 U. S., 93.

⁴ No Capitation, or other direct, tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

§ 152. Capitation and direct taxes.

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§§ 153-158.

Decisions of the Supreme Court of the United States:

§ 153. Decisions of the court. License Tax Cases, 5 Wall., 462; *Springer v. United States*, 102 U. S., 586; *Nichol v. Ames*, 173 U. S., 599; *South Carolina v. United States*, 199 U. S., 437.

§ 154. Export duties. ^aNo Tax or Duty shall be laid on Articles exported from any State.

Decisions of the Supreme Court of the United States:

§ 155. Decisions of the court. *Cooley v. Board of Wardens of Port of Philadelphia*, 12 How., 299; *Pace v. Burgess*, collector, 92 U. S., 372; *Turpin v. Burgess*, 117 U. S., 504; *Pittsburg & Southern Coal Co., v. Bates* 156 U. S., 577; *Nichols v. Ames*, 173 U. S., 509; *Williams v. Fears*, 179 U. S., 270; *De Lima v. Bidwell*, 182 U. S., 1; *Dooley v. United States*, 183 U. S., 151; *Fourteen Diamond Rings v. United States*, 183 U. S., 176; *Cornell v. Coyne*, 192 U. S., 418; *South Carolina v. United States*, 199 U. S., 437; *Armour Packing Co. v. United States*, 209 U. S., 56.

§ 156. Freedom of commerce. ^aNo preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

Decisions of the Supreme Court of the United States:

§ 157. Decisions of the court. *Cooley v. Board of Wardens of Port of Philadelphia et al.*, 12 How., 299; *State of Pennsylvania v. Wheeling and Belmont Bridge Company et al.*, 18 How., 421; *Munn v. Illinois*, 94 U. S., 113; *Packet Co. v. St. Louis*, 100 U. S., 423; *Packet Co. v. Cattlettsburg*, 105 U. S., 559; *Sprague v. Thompson*, 118 U. S., 90; *Morgan v. Louisiana*, 118 U. S., 455; *Johnson v. Chicago & Pacific Elevator Co.*, 119 U. S., 388; *South Carolina v. United States*, 199 U. S., 437; *Armour Packing Co. v. United States*, 209 U. S., 56.

§ 158. Appropriations and accounting of public money. ⁷No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

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§§ 159-161.

§ 159. Titles of nobility and gifts from foreign states. ⁸ No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

SECTION 10. ¹ No State shall enter into any Treaty, Alliance, or Confederation; ^{§ 160. States not to make treaties, coin money, pass ex post facto laws, impair contracts, etc.} grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; ¹ make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law,² or Law impairing the Obligation of Contracts,³ or grant any Title of Nobility.

Recent decisions of the Supreme Court of the United States:

§ 161. Decisions of the court. ¹ and ³ Virginia Coupon Cases, 114 U. S., 269; ¹ and ³ Allen, Auditor, et al. v. Baltimore & Ohio R. R. Co., 114 U. S., 311; ² Jaehne v. New York, 128 U. S., 189; ² Medley, Petitioner, 134 U. S., 160; ² Thompson v. Missouri, 171 U. S., 380; ² McDonald v. Massachusetts, 180 U. S., 311; ² Mallett v. North Carolina, 181 U. S., 589; ² and ³ Diamond Glue Co. v. U. S. Glue Co., 187 U. S., 611; ² Reetz v. Michigan, 188 U. S., 505; ³ American Smelting Co. v. Colorado, 204 U. S., 103; ³ Cleveland Electric Railway Co. v. Cleveland, 204 U. S., 116; ³ Rochester Railway Co. v. Rochester, 205 U. S., 236; ² Chanler v. Kelsey, 205 U. S., 466; ³ Vicksburg v. Waterworks Co., 206 U. S., 496; ³ Bernheimer v. Converse, 206 U. S., 516; ³ Sauer v. City of New York, 206 U. S., 536; ³ Smith v. Jennings, 206 U. S., 276; ³ Sullivan v. Texas, 207 U. S., 416; ³ Hunter v. Pittsburg, 207 U. S., 161; ³ Polk v. Mutual Reserve Fund Association, 207 U. S., 310; ³ Sullivan v. Texas, 207 U. S., 416; ³ Jetton v. University of the South, 208 U. S., 489; ³ Northern Pacific Railway v. Duluth, 208 U. S., 583; ³ Cosmopolitan Club v. Virginia, 208 U. S., 378; ³ Northern Pacific Railway v. Duluth, 208 U. S.,

583; ³ *Hudson Water Co. v. McCarter*, 209 U. S., 349; ³ *Yazoo & Mississippi Railroad Co. v. Vicksburg*, 209 U. S., 358; ³ *St. Louis v. United Railways Co.*, 210 U. S., 266; ³ *Berea College v. Kentucky*, 211 U. S., 45; ³ *Home Telephone Co. v. Los Angeles*, 211 U. S., 265; ³ *McLean v. Arkansas*, 211 U. S., 539; ³ *Hammond Packing Co. v. Arkansas*, 212 U. S., 322; ³ *Des Moines v. City Railway Co.*, 214 U. S., 179; ³ *Minneapolis v. Street Ry. Co.*, 215 U. S., 417; ³ *Henley v. Myers*, 215 U. S., 373; ³ *Hubert v. New Orleans*, 215 U. S., 170; ³ *Scott County Road Co. v. Hines*, 215 U. S., 336; ³ *Missouri Pacific Ry. Co. v. Kansas*, 216 U. S., 262; ³ *Wright v. Georgia R. R. & Banking Co.*, 216 U. S., 420; ³ *Great Western Ry. Co. v. Minnesota*, 216 U. S., 234; ³ *Great Northern Ry. Co. v. Minnesota*, 216 U. S., 206; ³ *Frellsen & Co. v. Crandell*, 217 U. S., 71.

² No State shall, without the Consent of the Congress, lay any Impost or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

§ 162. States not to lay impost or duties.

Decisions of the Supreme Court of the United States:

§ 163. Decisions of the court. *McCulloch v. State of Maryland*, 4 Wh., 316; *Gibbons v. Ogden*, 9 Wh., 1; *Brown v. The State of Maryland*, 12 Wh., 419; *Mager v. Grima et al.*, 8 How., 490; *Cooley v. Board of Wardens of Port of Philadelphia et al.*, 12 How., 299; *Almy v. State of California*, 24 How., 169; *License Tax Cases*, 5 Wall., 462; *Crandall v. State of Nevada*, 6 Wall., 35; *Waring v. The Mayor*, 8 Wall., 110; *Woodruff v. Perham*, 8 Wall., 123; *Hinson v. Lott*, 8 Wall., 148; *State Tonnage Tax Cases*, 12 Wall., 204; *State Tax on railway gross receipts*, 15 Wall., 284; *Inman Steamship Company v. Tinker*, 94 U. S., 238; *Cook v. Pennsylvania*, 97 U. S., 566; *Packet Co. v. Keokuk*, 95 U. S., 80; *People v. Campagnie Général Transatlantique*, 107 U. S., 59; *Turner v. Maryland*, 107 U. S., 38; *Brown et al. v. Houston, Collector, et al.*, 114 U. S., 622; *Coe v. Errol*, 116 U. S., 517; *Turpin v. Burgess*, 117 U. S., 504; *Pittsburg & Southern Coal Co. v. Bates*, 156 U. S., 577; *Pittsburg & Southern Coal Co. v. Louisiana*, 156 U. S., 590; *Scott v. Donald*, 165 U. S., 58; *Patap-*

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§§ 164-166.

aco Guano Co. v. North Carolina, 171 U. S., 345; *May & Co. v. New Orleans*, 178 U. S., 496; *Dooley v. United States*, 183 U. S., 151; *Cornell v. Coyne*, 192 U. S., 418; *American Steel & Wire Co. v. Speed*, 192 U. S., 500; *Dela-ware, L., &c., R. R. Co. v. Pennsylvania*, 198 U. S., 341; *McLean v. Denver & Rio Grande R. R.*, 203 U. S., 38; *Selliger v. Kentucky*, 213 U. S., 200.

³ No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into an Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

Decisions of the Supreme Court of the United States:

§ 165. Decisions of the court.

Green v. Biddle, 8 Wh., 1; *Poole et al. v. The Lessee of Fleegeer et al.*, 11 Pet., 185; *Cooley v. Board of War-dens of Port of Philadelphia et al.*, 12 How., 299; *Peete v. Morgan*, 19 Wall., 581; *Cannon v. New Orleans*, 20 Wall., 577; *Inman Steamship Company v. Tinker*, 94 U. S., 238; *Transportation Co. v. Wheel-ing*, 99 U. S., 273; *Packet Co. v. St. Louis*, 100 U. S., 423; *Packet Co. v. Keokuk*, 95 U. S., 80; *Vicksburg v. Tobin*, 100 U. S., 430; *Packet Co. v. Catlettsburg*, 105 U. S., 559; *Wiggins Ferry Co. v. East St. Louis*, 107 U. S., 365; *Transportation Company v. Parkersburg*, 107 U. S., 691; *Presser v. Illinois*, 116 U. S., 252; *Morgan v. Louisiana*, 118 U. S., 455; *Huse v. Glover*, 119 U. S., 543; *Ouachita Packet Co. v. Aiken*, 121 U. S., 444; *Indiana v. Kentucky*, 136 U. S., 479; *Virginia v. Tennessee*, 148 U. S., 503; *Wharton v. Wise*, 153 U. S., 155; *St. Louis & San Francisco Railway Co. v. James*, 161 U. S., 545.

ARTICLE II.

SECTION 1. ¹ The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four years, and together with the Vice President, chosen for the same Term, be elected, as follows:

§ 166. Terms of the President and Vice-President.

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§§ 167-170.

The two Houses of the first Congress, after examination, found that by provisions made in the Federal Convention and by the Continental Congress, the term of the first President began March 4, 1789 (I, 3). When March 4 falls on Sunday, the inauguration of the President of the United States occurs at noon, March 5 (III, 1996).

§ 167. Decisions of the court. Decisions of the Supreme Court of the United States: *Field v. Clark*, 143 U. S., 649; *Garfield v. Goldsby*, 211 U. S., 249; *Monongahela Bridge Co. v. United States*, 216 U. S., 177; *United States v. Grimaud*, 216 U. S., 614.

§ 168. Electors of President and Vice-President and their qualifications. ² Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

Questions of the qualifications of electors have arisen, and in one instance certain ones were found disqualified, but as their number was not sufficient to affect the result and as there was doubt as to what tribunal should pass on the question the votes were counted (III, 1941). In other cases there were objections, but the votes were counted (III, 1972-1974, 1979). In one instance an elector found to be disqualified resigned both offices, whereupon he was made eligible to fill the vacancy thus caused among the electors (III, 1975).

Decisions of the Supreme Court of the United States:

§ 169. Decisions of the court. *Chisholm, ex., v. Georgia*, 2 Dall., 419; *Leitensdorfer et al. v. Webb*, 20 How., 176; *Ex parte Siebold*, 100 U. S., 271; *In re Green*, 134 U. S., 377; *McPherson v. Blacker*, 146 U. S., 1.

§ 170. Time of choosing electors and time at which their votes are given. ³ The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

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§§ 171-174.

The time for choosing electors has been fixed on "the Tuesday next after the first Monday in November, in every fourth year;" and the electors in each State "meet and give in their votes on the second Monday in January next following their appointment, at such place in each State as the legislature of such State shall direct." (III, 1914.) The statutes also provide for transmitting to the President of the Senate certificates of the appointment of the electors and of their votes (III, 1915-1917).

§ 171. Decision
of the court.

Decision of the Supreme Court of the United States:
In re Green, 134 U. S., 377.

⁴ No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

§ 172. Qualifica-
tions of President
of the United
States.

§ 173. Decision
of the court.

Decision of the Supreme Court of the United States:
English v. The Trustees of the Sailors' Snug Harbor,
3 Pet., 99.

⁵ In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

§ 174. Succession
in case of removal,
death, resignation,
or disability of
President and
Vice-President.

⁶ The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be encreased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

§ 175. Compensation of President.

⁷ Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

§ 176. Oath of the President.

The taking of this oath, which is termed the inauguration, is made the occasion of certain simple ceremonies which are arranged for by a joint committee of the two Houses (III, 1998, 1999). The oath is taken at the east portico of the Capitol, although in earlier years it was taken in the Senate Chamber or Hall of the House (III, 1986-1995). And when Vice-President Fillmore succeeded to the vacancy in the office of President, Congress being in session, he took the oath in the Hall of the House in the presence of the Senate and House (III, 1997).

§ 177. Decision of the court.

Decision of the Supreme Court of the United States: In re Neagle, 135 U. S., 1.

SECTION 2. ¹ The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the

§ 178. The President the Commander in Chief.

§ 179. Opinions of the President's advisers.

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§§ 180-184.

Duties of their respective Offices, and he shall have power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

§ 180. President grants reprieves and pardons.

Decisions of the Supreme Court of the United States:

United States *v.* Wilson, 7 Pet., 150; *Ex parte* William Wells, 18 How., 307; *Ex parte* Garland, 4 Wall., 333; *Armstrong's*

§ 181. Decisions of the court.

Foundry, 6 Wall., 766; *The Grape Shot*, 9 Wall., 129; United States *v.* Padelford, 9 Wall., 542; United States *v.* Klein, 13 Wall., 128; *Armstrong v. The United States*, 13 Wall., 152; *Pargoud v. The United States*, 13 Wall., 156; *Hamilton v. Dillin*, 21 Wall., 73; *Mechanics and Traders' Bank v. Union Bank*, 22 Wall., 276; *Lamar, ex., v. Browne et al.*, 92 U. S., 187; *Wallach et al. v. Van Riswick*, 92 U. S., 202; *Eustis v. Bolles*, 150 U. S., 361.

² He shall have Power, by and with the Advice and

§ 182. President makes treaties.

Consent of the Senate, to make Treaties, provided two-thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and

§ 183. Appointing power of the President.

Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law; but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

Decisions of the Supreme Court of the United States:

Ware v. Hylton et al., 3 Dall., 199; *Marbury v. Madison*, 1 Cr., 137; United States *v.* Kirkpatrick, 9 Wh., 720; *American Insurance*

§ 184. Decisions of the court.

Company v. Canter (356 bales cotton), 1 Pet., 511; *Foster and Elam v. Neilson*, 2 Pet., 253; *Cherokee Nation v. State of Georgia*, 5 Pet., 1; *Patterson v. Gwinn et al.*, 5 Pet., 233;

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§§ 185-188.

Worcester v. State of Georgia, 6 Pet., 515; *City of New Orleans v. De Armas et al.*, 9 Pet., 224; *Holden v. Joy*, 17 Wall., 211; *United States v. Germaine*, 99 U. S., 508; *United States v. Corson*, 114 U. S., 619; *United States v. Perkins*, 116 U. S., 483; *United States v. Rauscher*, 119 U. S., 407; *Mormon Church v. United States*, 136 U. S., 1; *Field v. Clark*, 143 U. S., 649; *Shoemaker v. United States*, 147 U. S., 282; *Parsons v. United States*, 167 U. S., 324; *Rice v. Ames*, 180 U. S., 371; *Fourteen Diamond Rings v. United States*, 183 U. S., 176; *Dorr v. United States*, 195 U. S., 138.

³ The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

§ 185. President's power to fill vacancies during recess of the Senate.

Decision of the Supreme Court of the United States:

§ 186. Decision of the court.

The United States v. Kirkpatrick et al., 9 Wh., 720.

SECTION 3. He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; * * *

§ 187. Messages from the President.

In the early years of the Government the President made a speech to Congress on its assembling (II, 1139; V, 6629); but in 1801 President Jefferson discontinued this practice and transmitted a message "in writing," and this precedent has been followed since (V, 6629). Messages other than the annual message have always been transmitted in writing. A message is usually communicated to both Houses on the same day, but an original document accompanying can of course be sent to but one House (V, 6616, 6617). In early years confidential messages were often sent and considered in secret session of the House (V, 7251, 7252).

The ceremony of receiving a message from the President is simple (V, 6591), and may occur during consideration of a question of privilege (V, 6640-6642) or before the organization of the House (V, 6647-6649). But, with the exception of vetoes, messages are regularly laid before the House only at the time prescribed by the rule for the order of

§ 188. Reception of messages from the President.

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§§ 189-192.

business (V, 6635-6638). While a message of the President is always read in full the latest rulings have not permitted the reading of the accompanying documents to be demanded as a matter of right (V, 5267-5271).

* * * he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; * * *

§ 189. Power of President as to convening and adjourning Congress.

In certain exigencies the President may convene Congress at a place other than the seat of government (I, 2). Congress has frequently been convened by the President (I, 10, 11), and in one instance, when Congress had provided by law for meeting, the President called it together on an earlier day (I, 12). The statutes provide that in case of the removal, death, resignation, or inability of both President and Vice-President during a recess of Congress the Secretary who acts as President shall convene Congress in extraordinary session (I, 13). There has been some discussion as to whether or not there is a distinction between a session called by the President and other sessions of Congress (I, 12, footnote).

* * * he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the officers of the United States.

§ 190. President receives ambassadors, executes the laws, and commissions officers.

Decisions of the Supreme Court of the United States:

§ 191. Decisions of the court.

Marbury v. Madison, 1 Cr., 137; *Kendall*, Postmaster-General, *v. The United States*, 12 Pet., 524; *Luther v. Borden*, 7 How., 1; *The State of Mississippi v. Johnson*, President, 4 Wall., 475; *Stewart v. Kahn*, 11 Wall., 493; *In re Neagle*, 135 U. S., 1.

SECTION 4. The President, Vice President, and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

§ 192. Impeachment of civil officers.

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§§ 193, 194.

In the Blount trial the managers contended that all citizens of the United States were liable to impeachment, but this contention was not admitted (III, 2315), and in the Belknap trial both managers and counsel for respondent agreed that a private citizen, apart from offense in an office, might not be impeached (III, 2007). But resignation of the office does not prevent impeachment for crime or misdemeanor therein (III, 2007, 2317, 2444, 2445, 2459, 2509). In Blount's case it was decided that a Senator was not a civil officer within the meaning of the impeachment provisions of the Constitution (III, 2310, 2316). Questions have also arisen as to whether or not the Congressional Printer (III, 1785), or a vice-consul-general (III, 2515), might be impeached. Proceedings for the impeachment of territorial judges have been taken in several instances (III, 2486, 2487, 2488), although various opinions have been given that such an officer is not impeachable (III, 2022, 2486, 2493).

As to what are impeachable offenses there has been much discussion (III, 2008, 2019, 2020, 2356-2362, 2379-2381, 2405, 2406, 2410, 2498). For a time the theory that indictable offenses only were impeachable was stoutly maintained and as stoutly denied (III, 2356, 2360-2362, 2379-2381, 2405, 2406, 2410, 2416); but on the tenth and eleventh articles of the impeachment of the President the House concluded to impeach for other than indictable offenses (III, 2418), and in the Swayne trial the theory was definitely abandoned (III, 2019). While there has not been definite concurrence in the claim of the managers in the trial of the President that an impeachable offense is any misbehavior that shows disqualification to hold and exercise the office, whether moral, intellectual, or physical (III, 2015), yet the House has impeached judges for improper personal habits (III, 2328, 2505), and in the impeachment of the President one of the articles charged him with "intemperate, inflammatory, and scandalous harangues" in public addresses, tending to the harm of the Government (III, 2420). There was no conviction under these charges except in the single case of Judge Pickens, who was charged with intoxication on the bench (III, 2328, 2341). As to the impeachment of judges for other delinquencies, there has been much contention as to whether they may be impeached for any breach of good behavior (III, 2011, 2016, 2497), or only for judicial misconduct occurring in the actual administration of justice in connection with the court (III, 2010, 2013, 2017). The intent of the judge (III, 2014, 2382) as related to mistakes of the law, and the relations of intent to conviction have been discussed at length (III, 2014, 2381, 2382, 2518, 2519). The statutes make nonresidence of a judge an impeachable offense, and the House has

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taken steps to impeach for this cause (III, 2476, 2512). There has, however, been some question as to the power of Congress to make an impeachable offense (III, 2014, 2015, 2021, 2512). Usurpation of power has been examined several times in its relations as a cause for impeachment (III, 2404, 2508, 2509, 2516, 2517). There has also been discussion as to whether or not there is distinction between a misdemeanor and a high misdemeanor (III, 2270, 2367, 2492).

§ 195. Decision of the court. Decision of the Supreme Court of the United States:
Langford v. United States, 101 U. S., 341.

ARTICLE III.

SECTION 1. The judicial Power of the United States shall be vested in one supreme Court,

§ 196. The judges, their terms, and compensation.

and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Decisions of the Supreme Court of the United States:

§ 197. Decisions of the court. Chisholm, ex. v. Georgia, 2 Dall., 419; Stuart v. Laird, 1 Cr., 299; United States v. Peters, 5 Cr., 115; Cohens v. Virginia, 6 Cr., 264; Martin v. Hunter's Lessee, 1 Wh., 304; Osborn v. United States Bank, 9 Wh., 738; Benner et al. v. Porter, 9 How., 235; The United States v. Ritchie, 17 How., 525; Murray's Lessee et al. v. Hoboken Land and Improvement Company, 18 How., 272; Ex parte Vallandigham, 1 Wall., 243; Pennoyer v. Neff, 95 U. S., 714; United States v. Union Pacific Railroad Co., 98 U. S., 569; Mitchell v. Clark, 110 U. S., 633; Ames v. Kansas, 111 U. S., 449; In re Loney, 134 U. S., 373; In re Green, 134 U. S., 377; McAllister v. United States, 141 U. S., 174; Robertson v. Baldwin, 165 U. S., 275; Hanover National Bank v. Moyses, 186 U. S., 181; Turner v. Williams, 194 U. S., 279; Ex parte Wisner, 203 U. S., 449.

SECTION 2. ¹The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority¹;—to all cases affecting Ambassadors, other public Ministers and Consuls²;—to all Cases of admiralty and maritime Jurisdiction³;—to Controversies to which the United States shall be a Party⁴;—to Controversies between two or more States⁵;—between a State and Citizens of another State⁶;—between Citizens of different States⁷;—between Citizens of the same State claiming lands under Grants of different States⁸, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects⁹.

Recent decisions of the Supreme Court of the United States:

§ 199. Decisions of the court. ⁵*Missouri v. Illinois*, 180 U. S., 208; *Eastern Building Association v. Welling*, 181 U. S., 47; *Dooley v. United States*, 182 U. S., 222; *Tullock v. Mulvane*, 184 U. S., 497; *Patton v. Brady*, 184 U. S., 608; ⁶*Kansas v. Colorado*, 185 U. S., 125; ¹*Swafford v. Templeton*, 185 U. S., 487; ¹*Mobile Transportation Co. v. Mobile*, 187 U. S., 479; ¹*Andrews v. Andrews*, 188 U. S., 14; ¹*Hooker v. Los Angeles*, 188 U. S., 314; ¹*Cummings v. Chicago*, 188 U. S., 410; ¹*Schaefer v. Werling*, 188 U. S., 516; ³*The Roanoke*, 189 U. S., 185; ¹*Detroit, &c., Ry. v. Osborn*, 189 U. S., 383; ³*Patterson v. Bark Eudora*, 190 U. S., 169; ¹*Howard v. Fleming*, 191 U. S., 126; ¹, ⁷*Arbuckle v. Blackburn*, 191 U. S., 405; ¹*Deposit Bank v. Frankfort*, 191 U. S., 499; ¹, ⁷*Spencer v. Duplan Silk Co.*, 191 U. S., 526; ¹*Wabash R. R. Co. v. Pearce*, 192 U. S., 179; ¹*Rogers v. Alabama*, 192 U. S., 226; ⁶*South Dakota v. North Carolina*, 192 U. S., 286; ¹*Bankers' Casualty Co. v. Minn., St. P., &c., Ry.*, 192 U. S., 371; ¹*Spreckels Sugar Refining Co. v. McClain*, 192 U. S., 397; ⁷*Minnesota v. Northern Securities Co.*, 194 U. S., 48; ¹*Pacific Electric Ry. Co. v. Los Angeles*, 194 U. S., 112; ¹*Hooker v. Burr*, 194 U. S., 415; ¹*Cleveland v. Cleveland City Ry. Co.*, 194 U. S., 517; ⁷*Traction Company v. Mining Co.*, 196 U. S., 239;

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⁷*Dawson v. Columbia Trust Co.*, 197 U. S., 178; ⁹*Jacobson v. Massachusetts*, 197 U. S., 11; ¹*Leonard v. Vicksburg, &c., R. R. Co.*, 198 U. S., 416; ⁷*Farrell v. O'Brien*, 199 U. S., 89; ¹*South Carolina v. United States*, 199 U. S., 437; ¹*Carfer v. Caldwell*, 200 U. S., 293; ⁷*Security Mutual Life Ins. Co. v. Prewitt*, 202 U. S., 246; ⁵*Kansas v. United States*, 204 U. S., 331; ¹*The Winnebago*, 205 U. S., 354; ¹*Lee v. New Jersey*, 207 U. S., 67; *St. Louis & Iron Mountain Railway v. Taylor*, 210 U. S., 281; ¹*Berea College v. Kentucky*, 211 U. S., 45; ¹*North American Cold Storage Co. v. Chicago*, 211 U. S., 306; ¹*Waters-Pierce Oil Co. v. Texas*, 212 U. S., 112; *Wilcox v. Consolidated Gas Co.*, 212 U. S., 19; ¹*American Express Co. v. Mullins*, 212 U. S., 311; *Bonner v. Gorman*, 212 U. S., 86; ¹*Atchison, Topeka & Santa Fe Ry. v. Sowers*, 213 U. S., 55; ¹*Adams Express Co. v. Kentucky*, 214 U. S., 218; ¹*Oceanic Steam Navigation Co. v. Stranahan*, 214 U. S., 320; ¹*Goodrich v. Ferris*, 214 U. S., 71; ¹*Smithsonian Institution v. St. John*, 214 U. S., 19; ¹*Western Union Telegraph Co. v. Chiles*, 214 U. S., 274; ¹*El Paso & North-eastern Ry. Co. v. Gutierrez*, 215 U. S., 87; ¹*Weems v. United States*, 217 U. S., 349.

² In all Cases affecting Ambassadors, other public

§ 200. Original and
appellate jurisdic-
tion of the
Supreme Court.

Ministers and Consuls, and those in
which a State shall be a Party, the
supreme Court shall have original

Jurisdiction. In all the other Cases before men-
tioned, the supreme Court shall have appellate Juris-
diction, both as to Law and Fact, with such Excep-
tions, and under such Regulations as the Congress
shall make.

Decisions of the Supreme Court of the United States:

§ 201. Decisions of
the court.

Chisholm, ex., v. Georgia, 2 Dall., 419; *Wiscart et al. v. Dauchy*, 3 Dall., 221; *Marbury v. Madison*, 1 Cr., 137; *Durousseau et al. v. United States*, 6 Cr., 307; *Martin v. Hunter's Lessee*, 1 Wh., 304; *Cohens v. Virginia*, 6 Wh., 234; *Ex parte Kearney*, 7 Wh., 38; *Wayman v. Southard*, 10 Wh., 1; *Bank of the United States v. Halstead*, 10 Wh., 51; *United States v. Ortega*, 11 Wh., 467; *The Cherokee Nation v. The State of Georgia*, 5 Pet., 1; *Ex parte Crane et al.*, 5 Pet., 189; *The State of New Jersey v. The State of New York*, 5 Pet., 283; *Ex parte Sibbald v. United*

States, 12 Pet., 488; *The State of Rhode Island v. The State of Massachusetts*, 12 Pet., 657; *State of Pennsylvania v. The Wheeling, &c., Bridge Company*, 13 How., 518; *In re Kaine*, 14 How., 103; *Ableman v. Booth and United States v. Booth*, 21 How., 506; *Freeborn v. Smith*, 2 Wall., 160; *Ex parte McCardle*, 6 Wall., 318; *Ex parte McCardle*, 7 Wall., 506; *Ex parte Yerger*, 8 Wall., 85; *The Lucy*, 8 Wall., 307; *The Justices v. Murray*, 9 Wall., 274; *Pennsylvania v. Quicksilver Company*, 10 Wall., 553; *Murdock v. City of Memphis*, 20 Wall., 590; *The "Francis Wright,"* 105 U. S., 381; *Börs v. Preston*, 111 U. S., 252; *Ames v. Kansas*, 111 U. S., 449; *Craig v. Leitensdorfer*, 127 U. S., 764; *Wisconsin v. Pelican Ins. Co.*, 127 U. S., 265; *United States v. Texas*, 143 U. S., 621; *Louisiana v. Texas*, 176 U. S., 1; *Wilkes County v. Coler*, 180 U. S., 506; *W. W. Cargill Co. v. Minnesota*, 180 U. S., 452; *Mallett v. North Carolina*, 181 U. S., 589; *United States v. Bitty*, 208 U. S., 393.

³ The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

§ 202. Places of trial of crimes by jury.

Decisions of the Supreme Court of the United States:

Ex parte Milligan, 4 Wall., 2; *Barton v. Barbour*, § 203. Decisions of the court. 104 U. S., 126; *Ex parte Wall*, 107 U. S., 265; *Callan v. Wilson*, 127 U. S., 540; *Nashville, Chattanooga, etc., Railway v. Alabama*, 128 U. S., 96; *Eilenbecker v. Plymouth County*, 134 U. S., 31; *Jones v. United States*, 137 U. S., 202; *Cook v. United States*, 138 U. S., 157; *In re Ross*, 140 U. S., 453; *Fong Yu Ting v. United States*, 149 U. S., 698; *In re Debs*, petitioner, 158 U. S., 564; *Thompson v. Utah*, 170 U. S., 343; *Schick v. United States*, 195 U. S., 65; *Dorr v. United States*, 195 U. S., 138; *Matter of Strauss*, 197 U. S., 324; *Marvin v. Trout*, 199 U. S., 212; *Martin v. Texas*, 200 U. S., 316; *Tinsley v. Treat*, 205 U. S., 20; *Armour Packing Co. v. United States*, 209 U. S., 56; *Haas v. Henkel*, 216 U. S., 462.

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§§ 204-208.

SECTION. 3. ¹ Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

§ 204. Treason
against the United
States.

Decisions of the Supreme Court of the United States:

United States *v.* The Insurgents, 2 Dall., 335;
§ 205. Decisions of the court. United States *v.* Mitchell, 2 Dall., 348; *Ex parte*
Bollman and Swartwout, 4 Cr., 75; United States *v.*
Aaron Burr, 4 Cr., 469.

² The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the person Attainted.

§ 206. Punishment
for treason.

Decisions of the Supreme Court of the United States:

Bigelow *v.* Forest, 9 Wall., 339; Day *v.* Micou, 18
§ 207. Decisions of the court. Wall., 156; *Ex parte* Lange, 18 Wall., 163; Wallach
et al. v. Van Riswick, 92 U. S., 202.

ARTICLE IV.

SECTION. 1. Full Faith and Credit shall be given in each State to the Public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

§ 208. Each State
to give credit to
acts, records, etc.,
of other States.

Decisions of the Supreme Court of the United States:

§ 209. Decisions of the court. *Mills v. Duryee*, 7 Cr., 481; *Hampton v. McConnel*, 3 Wh., 234; *Mayhew v. Thatcher*, 6 Wh., 129; *Darby's Lessee v. Mayer*, 10 Wh., 465; *The United States v. Amedy*, 11 Wh., 392; *Caldwell et al. v. Carrington's heirs*, 9 Pet., 86; *M'Elmoyle v. Cohen*, 13 Pet., 312; *The Bank of Augusta v. Earle*, 13 Pet., 519; *Bank of the State of Alabama v. Dalton*, 9 How., 522; *D'Arcy v. Ketchum*, 11 How., 165; *Christmas v. Russell*, 5 Wall., 290; *Green v. Van Buskirk*, 7 Wall., 139; *Paul v. Virginia*, 8 Wall., 168; *Board of Public Works v. Columbia College*, 17 Wall., 521; *Thompson v. Whitman*, 18 Wall., 457; *Pennoyer v. Nebb*, 95 U. S., 714; *Bonaparte v. Tax Court*, 104 U. S., 592; *Robertson v. Pickrell*, 109 U. S., 608; *Brown et al. v. Houston, Collector, et al.*, 114 U. S., 622; *Hanley v. Donoghue*, 116 U. S., 1; *Renaud v. Abbott*, 116 U. S., 277; *Chicago & Alton R. R. v. Wiggins Ferry Co.*, 119 U. S., 615; *Borer v. Chapman*, 119 U. S., 587; *Cole v. Cunningham*, 133 U. S., 107; *Blount v. Walker*, 134 U. S., 607; *Simmons v. Saul*, 138 U. S., 439; *Reynolds v. Stockton*, 140 U. S., 254; *Carpenter v. Strange*, 141 U. S., 87; *Huntington v. Attrill*, 146 U. S., 657; *Glenn v. Garth*, 147 U. S., 360; *Laing v. Rigney*, 160 U. S., 531; *Chicago, Rock Island & Pacific Railway Co. v. Sturm*, 174 U. S., 710; *Thormann v. Frame*, 176 U. S., 350; *Hancock National Bank v. Farnum*, 176 U. S., 640; *Clarke v. Clarke et al.*, 178 U. S., 186; *Wilkes County v. Coler*, 180 U. S., 506; *W. W. Cargill Co. v. Minnesota*, 180 U. S., 452; *Johnson v. New York Life Ins. Co.*, 187 U. S., 491; *Andrews v. Andrews*, 188 U. S., 14; *Blackstone v. Miller*, 188 U. S., 189; *Finney v. Guy*, 189 U. S., 335; *Anglo-American Provision Co. v. Davis Provision Co.*, 191 U. S., 373; *Wabash R. R. Co. v. Flannigan*, 192 U. S., 29; *German Savings Society v. Dormitzer*, 192 U. S., 125; *Wedding v. Meyler*, 192 U. S., 573; *National Mutual Building and Loan Ass. v. Brahan*, 193 U. S., 635; *Minnesota v. Northern Securities Co.*, 194 U. S., 48; *National Exchange Bank v. Wiley*, 185 U. S., 257; *Jaster v. Currie*, 198 U. S., 144; *Harding v. Harding*, 198 U. S., 317; *Harris v. Balk*, 198 U. S., 215; *Louisville & Nashville R. R. v. Deer*, 200 U. S., 176; *Haddock v. Haddock*, 201 U. S., 562; *Northern Assurance Co. v. Grand View Building Association*, 203 U. S., 106; *Wetmore v. Karrick*, 205 U. S., 141; *Old Wayne Life Association v. McDonough*, 204 U. S., 8; *Tilt v. Kelsey*, 207 U. S., 43; *Brown v. Fletcher's Estate*, 210 U. S., 82; *Fauntleroy v. Lum*, 210 U. S., 230; *Atchison, Topeka & Santa Fe Ry. Co. v. Sowers*, 213 U. S., 55; *Everett v. Everett*, 215 U. S., 203; *Fall v. Eastin*, 215 U. S., 1; *Olmsted v. Olmsted*, 216 U. S., 386.

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§§ 210-212.

§ 210. Privileges
and immunities
of citizens.

SECTION 2. ¹ The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

Decisions of the Supreme Court of the United States:

Bank of United States *v.* Devereux, 5 Cr., 61,
§ 211. Decisions of Gassius *v.* Ballou, 6 Pet., 761; The State of Rhode
the court. Island *v.* The Commonwealth of Massachusetts, 12
Pet., 657; The Bank of Augusta *v.* Earle, 13 Pet., 519; Moore *v.* The People
of The State of Illinois, 14 How., 13; Conner et al. *v.* Elliott et al., 18 How.,
591; Dred Scott *v.* Sandford, 19 How., 393; Crandall *v.* State of Nevada, 6
Wall., 35; Woodruff *v.* Parham, 8 Wall., 123; Paul *v.* Virginia, 8 Wall.,
168; Downham *v.* Alexandria Council, 10 Wall., 173; Liverpool Insurance
Company *v.* Massachusetts, 10 Wall., 566; Ward *v.* Maryland, 12 Wall.,
418; Slaughterhouse Cases, 16 Wall., 36; Bradwell *v.* The State, 16 Wall.,
130; Chemung Bank *v.* Lowery, 93 U. S., 72; McCready *v.* Virginia, 94
U. S., 391; Philadelphia Fire Association *v.* New York, 119 U. S., 110;
Pembina Mining Co. *v.* Pennsylvania, 125 U. S., 181; Kimmish *v.* Ball,
129 U. S. 217; Cole *v.* Cunningham, 133 U. S., 107; Manchester *v.* Massa-
chusetts, 139 U. S., 240; Pittsburg & Southern Coal Co. *v.* Bates, 156 U. S.,
577; Vance *v.* W. A. Vandercook, No. 1, 170 U. S., 438; Blake *v.* McClung,
172 U. S., 239; Williams *v.* Fears, 179 U. S., 270; Travellers Insurance Co.
v. Connecticut, 185 U. S., 364; Chadwick *v.* Kelley, 187 U. S., 540; Diamond
Glue Co. *v.* U. S. Glue Co., 187 U. S., 611; Blackstone *v.* Miller, 188 U. S.,
189; Anglo American Provision Co. *v.* Davis Provision Co., 191 U. S.,
373; Chambers *v.* Baltimore and Ohio Railroad Co., 207 U. S., 142; Hudson
Water Co. *v.* McCarter, 209 U. S., 349.

² A person charged in any State with Treason,
Felony, or other Crime, who shall flee
§ 212. Extradition from Justice, and be found in another
for treason, felony, or other crime. State, shall on Demand of the executive
Authority of the State from which he fled, be de-
livered up, to be removed to the State having Juris-
diction of the Crime.

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§§ 213-216.

Decisions of the Supreme Court of the United States:

§ 213. Decisions of the court. *Holmes v. Jennison et al.*, 14 Pet., 540; *Commonwealth of Kentucky v. Dennison*, governor, 24 How., 66; *Taylor v. Tainter*, 16 Wall., 366; *Carroll County v. Smith*, 111 U. S., 556; *Ex parte Reggel*, 114 U. S., 642; *Mahon v. Justice*, 127 U. S., 700; *Lascelles v. Géorgia*, 148 U. S., 537; *Utter v. Franklin*, 172 U. S., 416; *Munsey v. Clough*, 196 U. S., 364; *Appleyard v. Massachusetts*, 203 U. S., 222; *Pettibone v. Nichols*, 203 U. S., 192; *McNichols v. Pease*, 207 U. S., 100; *Bossing v. Cody*, 208 U. S., 386; *Pierce v. Creecy*, 210 U. S., 387; *Marbles v. Creecy*, 215 U. S., 63.

§ 214. Persons held to service or labor. ³ No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.

Decisions of the Supreme Court of the United States:

§ 215. Decisions of the court. *Prigg v. The Commonwealth of Pennsylvania*, 16 Pet., 539; *Jones v. Van Zandt*, 5 How., 215; *Strader et al. v. Graham*, 10 How., 82; *Moore v. The People of the State of Illinois*, 14 How., 13; *Dred Scott v. Sanford*, 19 How., 393; *Ableman v. Booth and United States v. Booth*, 21 How., 506.

SECTION 3. ¹ New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the consent of the Legislatures of the States concerned as well as of the Congress.

§ 216. Admission and formation of new States.

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§§ 217-219.

Decisions of the Supreme Court of the United States:

§ 217. Decisions of the court. American Insurance Company et al. v. Canter (356 bales cotton), 1 Pet., 511; Pollard's Lessee v. Hagan, 3 How., 212; Cross et al. v. Harrison, 16 How., 164; Benson v. United States, 146 U. S., 325; Ward v. Race Horse, 163 U. S., 504; Bolln v. Nebraska, 176 U. S., 83; Louisiana v. Mississippi, 202 U. S., 1.

§ 218. Power of Congress over territory and other national property. ² The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

Decisions of the Supreme Court of the United States:

§ 219. Decisions of the court. McCulloch v. State of Maryland, 4 Wh., 316; American Insurance Company v. Canter, 1 Pet., 511; United States v. Gratiot et al., 14 Pet., 526; United States v. Rogers, 4 How., 567; Cross et al. v. Harrison, 16 How., 164; Muckey et al. v. Cox, 18 How., 100; Dred Scott v. Sandford, 19 How., 393; Gibson v. Chouteau, 13 Wall., 92; Clinton v. Englebert, 13 Wall., 434; Beall v. New Mexico, 16 Wall., 535; National Bank v. Yankton County, 101 U. S., 129; United States v. Waddell, 112 U. S., 76; Van Brocklin v. State of Tennessee, 117 U. S., 151; Clayton v. Utah Territory, 132 U. S., 632; Wisconsin Central Railroad Co. v. Price, 133 U. S., 496; Geofroy v. Riggs, 133 U. S., 258; Mormon Church v. United States, 136 U. S., 1; Jones v. United States, 137 U. S., 202; St. Paul, Minneapolis, etc., Railway Co. v. Phelps, 137 U. S., 528; Talton v. Mayes, 163 U. S., 376; American Publishing Co. v. Fisher, 166 U. S., 464; Camfield v. United States, 167 U. S., 518; Thompson v. Utah, 170 U. S., 343; Green Bay & Mississippi Canal Co. v. Patten Paper Co., 173 U. S., 179; Neely v. Henkel (No. 1), 180 U. S., 109; De Lima v. Bidwell, 182 U. S., 1; Dooley v. United States, 182 U. S., 222; Downes v. Bidwell, 182 U. S., 244; Fourteen Diamond Rings v. United States, 183 U. S., 176; Hawaii v. Mankichi, 190 U. S., 197; Binns v. United States, 194 U. S., 486; Dorr v. United States, 195 U. S., 138; Rasmussen v. United States, 197 U. S., 516; United States v. Heinzen, 206 U. S., 370; Grafton v. United States, 206 U. S., 333; Ponce v. Roman Catholic Church, 210 U. S., 296; Atchison, Topeka & Santa Fe

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• §§ 220-222.

Ry. Co. v. Sowers, 213 U. S., 55; El Paso & Northeastern Ry. Co. v. Gutierrez, 215 U. S., 87; Weems v. United States, 217 U. S., 349.

SECTION. 4. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

§ 220. Republican form of government and protection from domestic violence guaranteed to the States.

Decisions of the Supreme Court of the United States:

§ 221. Decisions of the court. Luther v. Borden, 7 How., 1; Texas v. White, 7 Wall., 700; In re Duncan, 139 U. S., 449; Taylor et al. v. Beckham (No. 1), 178 U. S., 548; South Carolina v. United States, 199 U. S., 437.

ARTICLE. V.

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and

§ 222. Amendments to the Constitution.

fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

Amendments to the Constitution are proposed in the form of joint resolutions, which have their several readings and are enrolled and signed by the presiding officers of the two Houses (V, 7029, footnote), but are not presented to the President for his approval (V, 7040). They are filed with the Secretary of State by the Committee on Enrolled Bills (V, 7041). The two Houses have requested the President to transmit to the States forthwith certain proposed amendments (V, 7041, 7043). The President may notify Congress by message of the promulgation of the ratification of a constitutional amendment (V, 7044). Question has arisen as to the power of a State to recall its assent to a constitutional amendment (V, 7042).

The vote required on a joint resolution proposing an amendment to the Constitution is two-thirds of those voting, a quorum being present, and not two-thirds of the entire membership (V, 7027, 7028). The requirement of the two-thirds vote applies to the vote on the final passage and not to amendments (V, 7031, 7032) or prior stages (V, 7029, 7030), but is required where the House votes on agreeing to Senate amendments (V, 7033, 7034). One House having, by a two-thirds vote, passed in amended form a proposed constitutional amendment from the other House, and then having by a majority vote receded from its amendment, the constitutional amendment was held not to be passed (V, 7035). A two-thirds vote is required to agree to a conference report on a joint resolution proposing an amendment to the Constitution (V, 7036).

Ayes and nays not required to pass a resolution amending the Constitution (vol. 5, 7038-7039).

ARTICLE VI.

¹All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

§ 225. Validity of debts and engagements.

² This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

§ 226. Constitution, laws, and treaties the supreme law of the land.

Recent decisions of the Supreme Court of the United States:

§ 227. Decisions of the court.

Dodge v. Woolsey, 18 How., 331; *State of New York v. Dibble*, 21 How., 366; *Ableman v. Booth and United States v. Booth*, 21 How., 506; *Sinnot v. Davenport*, 22 How., 227; *Foster v. Davenport*, 22 How., 244; *Haver v. Yaker*, 9 Wall., 32; *Clafflin v. Houseman, assignee*, 93 U. S., 130; *United States v. 43 Gallons of Whisky*, 93 U. S., 188; *Hanenstein v. Lynham*, 100 U. S., 483; *Neal v. Delaware*, 103 U. S., 370; *Ex parte Crow Dog*, 109 U. S., 556; *Carroll County v. Smith*, 111 U. S., 556; *Head Money Cases*, 112 U. S., 580; *Van Brocklin v. State of Tennessee*, 117 U. S., 151; *United States v. Rauscher*, 119 U. S., 407; *Kerr v. Illinois*, 119 U. S., 436; *Whitney v. Robinson*, 124 U. S., 190; *The Chinese Exclusion Cases*, 130 U. S., 581; *Geofroy v. Riggs*, 133 U. S., 258; *In re Neagle*, 135 U. S., 1; *Horner v. United States*, 143 U. S., 570; *Fong Yue Ting v. United States*, 149 U. S., 698; *Gulf, Colorado and Santa Fe Railway Co. v. Hefley*, 158 U. S., 98; *Ward v. Race Horse*, 163 U. S., 504; *McClellan v. Chipman*, 164 U. S., 347; *Smyth v. Ames*, 169 U. S., 466; *Missouri, Kansas & Texas Railway Co. v. Haber*, 169 U. S., 613; *Ohio v. Thomas*, 173 U. S., 276; *Lone Wolf v. Hitchcock*, 187 U. S., 553; *South Carolina v. United States*, 199 U. S., 437; *Paddell v. City of New York*, 211 U. S., 446; *Berea College v. Kentucky*, 211 U. S., 45; *McLean v. Arkansas*, 211 U. S., 539; *Atchison, Topeka & Santa Fe Ry. Co. v. Sowers*, 213 U. S., 55; *Sanchez v. United States*, 216 U. S., 167.

³ The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by

§ 228. Oaths of public officers; and prohibition of religious tests.

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§§ 229-231.

Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

The statutes prescribe the form of oath as follows (I, 128):

§ 229. Form of oath.

"I, A B, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion, and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God."

The act of 1789 provides that on the organization of the House and previous to entering on any other business the oath shall be administered by any Member—by usage the one of longest continuous service (I, 131)—to the Speaker and by the Speaker to the other Members and Clerk (I, 130). This law, however, has at times been considered in the House as directory merely (I, 118, 242, 243, 245), but at other times has been observed carefully (I, 118, 140).

The Speaker possesses no arbitrary power in the administration of the oath (I, 134), and when objection is made the question must be decided by the House and not by the Chair (I, 519, 520). An objection prevents the Speaker from administering the oath of his own authority, even

§ 231. Functions of the Speaker in administering the oath.

though the credentials be regular in form (I, 135-138). The Speaker has frequently declined to administer the oath in cases wherein the House has, by its action, indicated that he should not do so (I, 139, 140). And in case of doubt he has waited the instruction of the House (I, 396). There has been discussion as to the competency of a Speaker pro tempore to administer the oath (I, 170), and in the absence of the Speaker a Member-elect waited until the Speaker should be present (I, 179). The House may authorize the Speaker to administer the oath to a Member away from the House (I, 169), or may, in such a case, authorize another than the Speaker to administer the oath (I, 170).

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§§ 232-235.

Members have been sworn at the beginning of a second session before the ascertainment of a quorum (I, 176-178), and where a roll call or other ascertainment has shown the absence of a quorum (I, 178, 181, 182). In one instance, however, the Speaker declined to administer the oath under such circumstances (II, 875).

A proposition to administer the oath to a Member is a matter of high privilege, and the oath has been administered during a call of the roll on a motion to agree to rules at the time of organization (I, 173), before the reading of the Journal (I, 172), before a pending motion to amend the Journal (I, 171). A division being demanded on a resolution for seating several claimants, the oath may be administered to each as soon as his case is decided (I, 623). When the House votes to admit a Member and the motion to reconsider is disposed of, the right to be sworn is complete and not to be deferred even by a motion to adjourn (I, 622).

The right of a Member-elect to take the oath is sometimes challenged. This usually occurs at the time of organization of the House. The challenge proceeds from some Member, but the fact that he has not yet taken the oath himself does not debar him from making the challenge (I, 141).

The Member challenging does so on his responsibility as a Member or on the strength of documents (I, 448) or on both (I, 443, 474). And where an objection was sustained neither by affidavit nor on the responsibility of the Member objecting, the House declined to entertain it (I, 455).

It has been held, although not uniformly, that in cases where the right of a Member-elect to take the oath is challenged, the Speaker may direct the Member to stand aside temporarily (I, 143-146, 474). The Member so challenged is not thereby deprived of any right (I, 155), and when several are challenged and stand aside the question is first taken on the Member-elect first required to stand aside (I, 147, 148). In 1861 it was held that the House might direct contested names to be passed over until the other Members-elect had been sworn in (I, 154). Motions and debate are in order on the questions involved in a challenge, and in a few cases other business has intervened by unanimous consent (I, 149, 150). By unanimous consent the consideration of a challenge is sometimes deferred until after the completion of the organization (I, 474), and by unanimous consent also the House has sometimes proceeded to legislative business pending consideration of the right of a Member to be sworn (I, 151-152).

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§§ 236-239.

Although the House has emphasized the impropriety of swearing in a Member without credentials (I, 162-168), yet it has been done in cases wherein the credentials are delayed or lost and there is no doubt of the election (I, 85, 176-178), or where the governor of a State has declined to give credentials to a person whose election was undoubted and uncontested (I, 553). Where the *prima facie* right is contested the Speaker declines to administer the oath (I, 550), but the House admits on his *prima facie* showing and without regard to final right a Member-elect from a recognized constituency whose credentials are in due form and whose qualifications are unquestioned (I, 528-534). If the status of the constituency is in doubt, the House usually defers the oath (I, 361, 386, 448, 461). The House also may defer the oath when a question of qualifications arises (I, 474), but it may investigate qualifications after the oath is taken (I, 156-159, 420, 462, 481), and after investigation unseat the Member by majority vote (I, 428).

Questions of sanity (I, 441) and loyalty (I, 448) seem to pertain to the competency to take the oath rather than to the question of qualifications, although there has been not a little debate on this subject (I, 479).

Decisions of the Supreme Court of the United States:

§ 237. Sanity and loyalty as related to the oath. *Ex parte Garland*, 4 Wall., 333; *Davis v. Beason*, 133 U. S., 333; *Mormon Church v. United States*, 136 U. S., 1.

§ 238. Decisions of the court.

ARTICLE VII.

§ 239. Ratification of the Constitution. The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

DONE in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven and of the Independence of the United States of America the Twelfth. **In Wit-**

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ness whereof We have hereunto subscribed our
Names,

GO WASHINGTON—
Presi^{dt}. and Deputy from Virginia.

[Signed also by the deputies of twelve States.]

New Hampshire.

JOHN LANGDON,

NICHOLAS GILMAN.

Massachusetts.

NATHANIEL GORHAM,

RUFUS KING.

Connecticut.

WM. SAML. JOHNSON,

ROGER SHERMAN.

New York.

ALEXANDER HAMILTON.

New Jersey.

WIL: LIVINGSTON,

WM. PATERSON,

DAVID BREARLEY,

JONA. DAYTON.

Pennsylvania.

B. FRANKLIN,

THOMAS MIFFLIN,

ROBT. MORRIS,

GEO: CLYMER,

THO: FITZSIMONS,

JARED INGERSOLL,

JAMES WILSON,

GOUV: MORRIS.

Delaware.

GEO: READ,

GUNNING BEDFORD, Jun'r,

JOHN DICKINSON,

RICHARD BASSETT.

JACO: BROOM,

Maryland.

JAMES M'HENRY,

DAN: OF ST. THOS. JENIFER,

DANL CARROLL

Virginia.

JOHN BLAIR,

JAMES MADISON, Jr,

North Carolina.

WM. BLOUNT,

RICH'D DOBBS SPAIGHT,

HU. WILLIAMSON.

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§§ 240, 241.

South Carolina.

J. RUTLEDGE,
CHARLES PINCKNEY,

CHARLES COTESWORTH PINCKNEY,
PIERCE BUTLER.

Georgia.

WILLIAM FEW,

ABR. BALDWIN.

Attest:

WILLIAM JACKSON, *Secretary.*

ARTICLES IN ADDITION TO, AND AMENDMENT OF, THE CONSTITUTION OF THE UNITED STATES OF AMERICA, PROPOSED BY CONGRESS, AND RATIFIED BY THE LEGISLATURES OF THE SEVERAL STATES PURSUANT TO THE FIFTH ARTICLE OF THE ORIGINAL CONSTITUTION. ^a

[ARTICLE I.]

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

§ 240. Freedom of religion, of speech, and of peaceable assembly.

Decisions of the Supreme Court of the United States:

§ 241. Decisions of the court.

Terret et al. *v.* Taylor et al., 9 Cr., 43; Vidal et al. *v.* Girard et al., 2 How., 127; *Ex parte* Garland, 4 Wall., 333; United States *v.* Cruikshank et al., 92 U. S., 542;

Reynolds *v.* United States, 98 U. S., 145; Spies *v.* Illinois, 123 U. S., 131;

^a The first ten amendments to the Constitution of the United States were proposed to the legislatures of the several States by the First Congress, on the 25th of September, 1789. They were ratified by the following States, and the notifications of ratification by the governors thereof were successively communicated by the President to Congress: New Jersey, November 20, 1789; Maryland, December 19, 1789; North Carolina, December 22, 1789; South Carolina, January 19, 1790; New Hampshire, January 25, 1790; Delaware, January 28, 1790; Pennsylvania, March 10, 1790; New York, March 27, 1790; Rhode Island, June 15, 1790; Vermont, November 3, 1791, and Virginia, December 15, 1791. There is no evidence on the journals of Congress that the legislatures of Connecticut, Georgia, and Massachusetts ratified them.

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§§ 242-246.

Davis v. Beason, 133 U. S., 333; *Eilenbecker v. Plymouth County*, 134 U. S., 31; *Mormon Church v. United States*, 136 U. S., 1; *In re Rapier* 143 U. S., 110; *Horner v. United States*, 143 U. S., 207; *Bradfield v. Roberts*, 175 U. S., 291; *Turner v. Williams*, 194 U. S., 279; *Jack v. Kansas*, 199 U. S., 372; *Quick Bear v. Leupp*, 210 U. S., 50; *Twining v. New Jersey*, 211 U. S., 78.

[ARTICLE II.]

§ 242. The right
to bear arms.

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Decisions of the Supreme Court of the United States:

§ 243. Decisions
of the court.

Presser v. Illinois, 116 U. S., 252; *Spies v. Illinois*, 123, U. S., 131; *Eilenbecker v. Plymouth County*, 134 U. S., 31; *Jack v. Kansas*, 199 U. S., 372; *Twining v. New Jersey*, 211 U. S., 78.

[ARTICLE III.]

§ 244. Quartering
of soldiers in
houses.

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

Decisions of the Supreme Court of the United States:

§ 245. Decisions
of the court.

Spies v. Illinois, 123 U. S., 131; *Eilenbecker v. Plymouth County*, 134 U. S., 31; *Jack v. Kansas*, 199 U. S., 372; *Twining v. New Jersey*, 211 U. S., 78.

[ARTICLE IV.]

§ 246. Security
from unreasonable
searches and
seizures.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath

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§§ 247, 248.

or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Decisions of the Supreme Court of the United States:

§ 247. Decisions of the court. *Smith v. State of Maryland*, 18 How., 71; *Murray's Lessee et al. v. Hoboken Land and Improvement Company*, 18 How., 272; *Ex parte Milligan*, 4 Wall., 2; *Boyd v. United States*, 116 U. S., 616; *Spies v. Illinois*, 123 U. S., 131; *Eilenbecker v. Plymouth County*, 134 U. S., 31; *Fong Yue Ting v. United States*, 149 U. S., 698; *Interstate Commerce Commission v. Brimson*, 154 U. S., 447; *In re Chapman*, 166 U. S., 661; *Adams v. New York*, 192 U. S., 585; *Morris v. Hitchcock*, 194 U. S., 384; *Public Clearing House v. Coyne*, 194 U. S., 497; *Interstate Commerce Commission v. Baird*, 194 U. S., 25; *Jack v. Kansas*, 199 U. S., 372; *Hale v. Henkel*, 201 U. S., 43; *Consolidated Rendering Co. v. Vermont*, 207 U. S., 541; *American Tobacco Co. v. Werckmeister*, 207 U. S., 284; *Twining v. New Jersey*, 211 U. S., 78; *Hammond Packing Co. v. Arkansas*, 212 U. S., 322; *Bagley v. General Fire Extinguishing Co.*, 212 U. S., 477; *Smithsonian Institution v. St. John*, 214 U. S., 19; *Rhodus v. Manning*, 217 U. S., 597.

[ARTICLE V.]

§ 248. Security as to accusations, trials, and property. No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger;¹ nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb;² nor shall be compelled in any Criminal Case to be a witness against himself;³ nor be deprived of life, liberty, or property, without due process of law;⁴ nor shall private property be taken for public use, without just compensation.⁵

Recent decisions of the Supreme Court of the United States:

§ 249. Decisions of the court. ² *Kepner v. United States*, 195 U. S., 100; *McCray v. United States*, 195 U. S., 27; ¹ *Rasmussen v. United States*, 197 U. S., 516; ⁴ *Ju Toy v. United States*, 198 U. S., 253; ³ *Jack v. Kansas*, 199 U. S., 372; ⁴ *South Carolina v. United States*, 199 U. S., 437; ² *Trono v. United States*, 199 U. S., 521; ⁵ *Chicago, B. & Q. Ry. Co. v. Drainage Commissioners*, 200 U. S., 561; ⁵ *Southern Pacific R. R. Co. v. United States*, 200 U. S., 341; *Howard v. Kentucky*, 200 U. S., 164; ³ *Hale v. Henkel*, 201 U. S., 43; ³ *McAlister v. Henkel*, 201 U. S., 90; ³ *Nelson v. U. S.*, 201 U. S., 92; ³ *Sawyer v. U. S.*, 202 U. S., 150; ¹ *Matter of Moran*, 203 U. S., 96; ⁶ *Union Bridge Co. v. U. S.*, 204 U. S., 364; ⁵ *Martin v. District of Columbia*, 205 U. S., 135; *Barrington v. Missouri*, 205 U. S., 483; ⁴ and ⁵ *United States v. Heinszen*, 206 U. S., 370; ⁴ *Ellis v. U. S.*, 206 U. S., 246; ² *Grafton v. U. S.*, 206 U. S., 333; ⁴ *Hunter v. Pittsburgh*, 207 U. S., 161; ² *Taylor v. U. S.*, 207 U. S., 120; *Shoener v. Pennsylvania*, 207 U. S., 188; ³ and ⁵ *Consolidated Rendering Co. v. Vermont*, 207 U. S., 541; ³ *American Tobacco Co. v. Werckmeister*, 207 U. S., 284; ⁴ *Adair v. U. S.*, 208 U. S., 161; ² *Bassing v. Cady*, 208 U. S., 386; ⁴ *Garfield v. Goldsby*, 211 U. S., 249; ³ and ⁴ *Twining v. New Jersey*, 211 U. S., 78; ⁴ *Goon Shung v. United States*, 212 U. S., 566; ⁴ *New York Central R. R. v. United States*, 212 U. S., 481; ⁴ *United States v. Delaware & Hudson Co.*, 213 U. S., 366; ² *Keerl v. Montana*, 213 U. S., 135; ⁴ *Oceanic Navigation Co. v. Stranahan*, 214 U. S., 320; *District of Columbia v. Brooke*, 214 U. S., 138; ⁴ *Sanchez v. United States*, 216 U. S., 167; ⁴ *Monongahela Bridge Co. v. United States*, 216 U. S., 177; ² *Brantley v. Georgia*, 217 U. S., 284; ³ *Rhodus v. Manning*, 217 U. S., 597; ⁴ *United States v. Welch*, 217 U. S., 333.

[ARTICLE VI.]

IN ALL CRIMINAL PROSECUTIONS, THE ACCUSED SHALL ENJOY THE RIGHT TO A SPEEDY AND PUBLIC TRIAL, BY AN IMPARTIAL JURY OF THE STATE AND DISTRICT WHEREIN THE CRIME SHALL HAVE BEEN COMMITTED, WHICH DISTRICT SHALL HAVE BEEN PREVIOUSLY ASCERTAINED BY LAW, AND TO BE

§ 250. Right to trial by jury and to confront witnesses and secure testimony.

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§ 251.

INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION; TO BE CONFRONTED WITH THE WITNESSES AGAINST HIM; TO HAVE ~~COMPULSORY PROCESS FOR OBTAINING~~ WITNESSES IN HIS FAVOR, AND TO HAVE THE ASSISTANCE OF COUNSEL FOR HIS DEFENCE.

Recent decisions of the Supreme Court of the United States:

§ 251. Decisions of the court.

Withers *v.* Buckley et al., 20 How., 84; *Ex parte* Milligan, 4 Wall., 2; Twichell *v.* The Commonwealth, 7 Wall., 321; Miller *v.* The United States, 11 Wall., 268; United States *v.* Cook, 17 Wall., 168; United States *v.* Cruikshank et al., 92 U. S., 542; Reynolds *v.* United States, 98 U. S., 145; Spies *v.* Illinois, 123 U. S., 131; Brooks *v.* Missouri, 124 U. S., 394; Callan *v.* Wilson, 127 U. S., 540; Eilenbecker *v.* Plymouth County, 134 U. S., 31; Jones *v.* United States, 137 U. S., 202; Cook *v.* United States, 138 U. S., 157; *In re* Shubuya Jugiro, 140 U. S., 291; *In re* Ross, 140 U. S., 453; Fong Yue Ting *v.* United States, 149 U. S., 698; Mattox *v.* United States, 156 U. S., 237; Rosen *v.* United States, 161 U. S., 29; United States *v.* Zucker, 161 U. S., 475; Wong Wing *v.* United States, 163 U. S., 228; Thompson *v.* Utah, 170 U. S., 343; Maxwell *v.* Dow, 176 U. S., 581; Motes *v.* United States, 178 U. S., 458; Fidelity and Deposit Co. *v.* United States, 187 U. S., 315; Hawaii *v.* Mankichi, 190 U. S., 197; Lloyd *v.* Dollison, 194 U. S., 445; West *v.* Louisiana, 194 U. S., 258; Turner *v.* Williams, 194 U. S., 279; Schirk *v.* United States, 195 U. S., 65; Dorr *v.* United States, 195 U. S., 138; Rassmussen *v.* United States, 197 U. S., 516; Beavers *v.* Haubert, 198 U. S., 77; Marvin *v.* Trout, 199 U. S., 212; Jack *v.* Kansas, 199 U. S., 372; Martin *v.* Texas, 200 U. S., 316; Howard *v.* Kentucky, 200 U. S., 164; Sawyer *v.* United States, 202 U. S., 150; Tinsley *v.* Treat, 205 U. S., 20; Ughbanks *v.* Armstrong, 208 U. S., 481; Armour Packing Co. *v.* United States, 209 U. S., 56; Twining *v.* New Jersey, 211 U. S., 78; Goon Shung *v.* United States, 212 U. S., 566; ³ Knoxville *v.* Knoxville Water Co., 212 U. S., 1; United States *v.* Stevenson, 215 U. S., 190; Haas *v.* Henkel, 216 U. S., 462.

[ARTICLE VII.]

In suits at common law, where the value in controversy shall exceed twenty dollars, ~~the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.~~

~~§ 252. Jury trial in suits at common law.~~

Decisions of the Supreme Court of the United States:

§ 253. Decisions of the court. United States *v.* La Vengeance, 3 Dall., 297; Bank of Columbia *v.* Oakley, 4 Wh., 235; Parsons *v.* Bedford et al., 3 Pet., 433; Lessee of Livingston *v.* Moore et al., 7 Pet., 469; Webster *v.* Reid, 11 How., 437; State of Pennsylvania *v.* The Wheeling, &c., Bridge Company et al., 13 How., 518; The Justices *v.* Murray, 9 Wall., 274; Edwards *v.* Elliott et al., 21 Wall., 532; Pearson *v.* Yewdall, 95 U. S., 294; McElrath *v.* United States, 102 U. S., 426; Spies *v.* Illinois, 123 U. S., 131; Arkansas Valley Land & Cattle Co. *v.* Mann, 130 U. S., 69; Eilenbecker *v.* Plymouth County, 134 U. S., 31; Whitehead *v.* Shattuck, 138 U. S., 146; Scott *v.* Neely, 140 U. S., 106; Cates *v.* Allen, 149 U. S., 451; Fong Yue Ting *v.* United States, 149 U. S., 698; Coughran *v.* Bigelow, 164 U. S., 301; Walker *v.* New Mexico & Southern Pacific Railroad, 165 U. S., 593; Chicago, Burlington & Quincy *v.* Chicago, 166 U. S., 226; American Publishing Co. *v.* Fisher, 166 U. S., 464; Rassmussen *v.* United States, 197 U. S., 516; Marvin *v.* Trout, 199 U. S., 212; Jack *v.* Kansas, 199 U. S., 372; Fidelity Mutual Life Ins. Co. *v.* Clark, 203 U. S., 64; Twining *v.* New Jersey, 211 U. S., 78.

[ARTICLE VIII.]

§ 254. Excessive bail or fines and cruel punishments prohibited.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Decisions of the Supreme Court of the United States:

§ 255. Decisions of the court. Pervear *v.* Commonwealth, 5 Wall., 475; Spies *v.* Illinois, 123 U. S., 131; Manning *v.* French, 133 U. S., 186; Eilenbecker *v.* Plymouth County, 134 U. S., 31; McElvaine *v.* Brush, 142 U. S., 155; O'Neil *v.* Vermont, 144 U. S., 323;

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§§ 256-259.

McDonald v. Massachusetts, 180 U. S., 311; *Jack v. Kansas*, 199 U. S., 372; *Ughbar v. Armstrong*, 208 U. S., 481; *Twining v. New Jersey*, 211 U. S., 78; *Weems v. United States*, 217 U. S., 349.

[ARTICLE IX.]

§ 256. Rights reserved to the people.

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Decisions of the Supreme Court of the United States:

§ 257. Decisions of the court.

Lessee of Livingston v. Moore et al., 7 Pet., 469; *Spies v. Illinois*, 123 U. S., 131; *Jack v. Kansas*, 199 U. S., 372.

[ARTICLE X.]

§ 258. Powers reserved to the States.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Recent decisions of the Supreme Court of the United States:

Clafin v. Houseman, assignee, 93 U. S., 130; *Inman Steamship Company v. Tinker*, 94 U. S., 238; *United States v. Fox*, 94 U. S., 315; *Tennessee v. Davis*, 100 U. S., 257; *Spies v. Illinois*, 123 U. S., 131; *Pollock v. Farmers' Loan & Trust Co. (Income Tax case)*, 157 U. S., 429; *Forsyth v. Hammond*, 166 U. S., 506; *St. Anthony Falls Water Power Co. v. St. Paul Water Commissioners*, 168 U. S., 349; *Missouri, Kansas & Texas Railway Co. v. Haber*, 169 U. S., 613; *Hancock Mutual Life Ins. Co. v. Warren*, 181 U. S., 73; *Kansas v. Colorado*, 185 U. S., 125; *Andrews v. Andrews*, 188 U. S., 14; *Northern Securities Co. v. United States*, 193 U. S., 197; *Turner v. Williams*, 194 U. S., 279; *McCray v. United States*, 195 U. S., 27; *Central of Georgia Ry. Co. v. Murphey*, 196 U. S., 194; *Matter of Heff (Indian)*, 197 U. S., 488; *South Carolina v. United States*, 199 U. S., 437; *Jack v. Kansas*, 199 U. S., 372; *Hodges v. United States*, 203 U. S., 1; *Kansas v. Colorado*, 206 U. S., 46; *Prentiss v. Atlantic Coast Line*, 211 U. S., 210; *Keller v.*

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§§ 260, 261.

United States, 213 U. S., 138; *Adams Express Co. v. Kentucky*, 214 U. S., 218; *Western Union Telegraph Co. v. Chiles*, 214 U. S., 274; *Holmgren v. United States*, 217 U. S., 509.

ARTICLE XI.^a

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

§ 260. Extent of the judicial power.

Decisions of the Supreme Court of the United States:

§ 261. Decisions of the court.

State of Georgia v. Brailsford et al., 2 Dall., 402; *Chisholm, ex., v. State of Georgia*, 2 Dall., 419; *Hollingsworth et al. v. Virginia*, 3 Dall., 378; *Cohen v. Virginia*, 6 Wh., 264; *Osborn v. United States Bank*, 9 Wh., 738; *United States v. The Planters' Bank*, 9 Wh., 904; the Governor of Georgia *v. Juan Madrazo*, 1 Pet., 110; *Cherokee Nation v. State of Georgia*, 5 Pet., 1; *Briscoe v. The Bank of the Commonwealth of Kentucky*, 11 Pet., 257; *Curran v. State of Arkansas et al.*, 15 How., 304; *Louisiana v. Jumel*, 107 U. S., 711; *New Hampshire v. Louisiana*, 108 U. S., 76; *Clark v. Barnard*, 108 U. S., 436; *Cunningham v. Macon & Brunswick Railroad*, 109 U. S., 446; *Poindexter v. Greenlow*, 114 U. S., 270; *Allen, auditor, et al. v. Baltimore & Ohio R. R. Co.*, 114 U. S., 311; *Hagood v. Southern*, 117 U. S., 52; *Ralston v. Missouri Fund Commissioners*, 120 U. S., 390; *In re Ayers*, 123 U. S., 443; *Lincoln County v. Luning*, 133 U. S., 529; *Christian v. Atlantic & North Carolina R. R. Co.*, 133 U. S., 233; *Hans v. Louisiana*, 134 U. S., 1; *North Carolina v. Temple*, 134 U. S., 22; *New York Guaranty Co. v. Steele*, 134 U. S., 230; *Virginia Coupon Cases*, 135 U. S., 662; *Pennoyer v. McConnaughy*, 140 U. S., 1; *United States v. Texas*, 143 U. S., 621; *In re Tyler*, 149 U. S., 164; *Reagan v. Farmers' Loan & Trust Co.*, 154 U. S., 362; *Scott v. Donald*, 165

^a The eleventh amendment to the Constitution of the United States was proposed to the legislatures of the several States by the Third Congress on the 5th of September, 1794; and was declared in a message from the President to Congress dated the 8th of January, 1798, to have been ratified by the legislatures of three-fourths of the States.

CONSTITUTION OF THE UNITED STATES.

§§ 262.

U. S., 58; *Scott v. Donald*, 165 U. S., 107; *Tindal v. Wesley*, 167 U. S., 204; *Smyth v. Ames*, 169 U. S., 466; *Fitts v. McGhee*, 172 U. S., 516; *Louisiana v. Texas*, 176 U. S., 1; *Smith v. Reeves*, 178 U. S., 436; *Scranton v. Wheeler*, 179 U. S., 141; *Illinois Central Railroad Co. v. Adams*, 180 U. S., 28; *Prout v. Starr*, 188 U. S., 537; *South Dakota v. North Carolina*, 192 U. S., 286; *Chandler v. Dix*, 194 U. S., 590; *Jacobson v. Massachusetts*, 197 U. S., 11; *Graham v. Folsom*, 200 U. S., 248; *Gunter v. Atlantic Coast Line*, 200 U. S., 273; *McNeill v. Southern Railway Co.*, 202 U. S., 543; *Mississippi R. R. Commission v. Illinois Central R. R.*, 203 U. S., 335; *Scully v. Bird*, 209 U. S., 481; *Ex parte Young*, 209 U. S., 123; *Murray v. Wilson Distilling Co.*, 213 U. S., 151; *Ludwig v. Western Union Telegraph Co.*, 216 U. S., 146; *Western Union Telegraph Co. v. Andrews*, 216 U. S., 165.

ARTICLE XII.^a

The Electors shall meet in their respective states, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;—The President of the Senate shall, in presence

§ 262. Meeting of the electors and transmission and count of their votes.

^a The twelfth amendment to the Constitution of the United States was proposed to the legislatures of the several States by the Eighth Congress on the 12th of December, 1803, in lieu of the original third paragraph of the first section of the second article, and was declared in a proclamation of the Secretary of State, dated the 25th of September, 1804, to have been ratified by the legislatures of three-fourths of the States.

of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;— * * *

The electoral count occurs in the Hall of the House at 1 p. m. on the second Wednesday of February succeeding every meeting of electors (III, 1918). While a law prescribes in detail the procedure at the count, the two Houses by concurrent resolution provide for the meeting to count the vote, for the appointment of tellers, and for the declaration of the state of the vote (III, 1961).

* * * The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President. The person having the greatest number of votes as Vice-President,

§ 263. Elections of President and Vice-President by the House and Senate in certain cases.

§ 264.

shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

The House of Representatives, in 1801 (III, 1983), chose a President under the following constitutional provision, which was superseded in 1803 by the twelfth amendment:

“The electors shall meet in their respective States, and vote by ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; A quorum for this Purpose shall consist of a Member or Members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by ballot the Vice-President.”

§ 264. First provision for election in case of failure of electoral college to choose.

CONSTITUTION OF THE UNITED STATES.

§§ 265-267.

In 1825 the House elected a President under the twelfth amendment (III, 1985); and in 1837 the Senate elected a Vice-President (III, 1941).

§ 265. Decision of the court. Decision of the Supreme Court of the United States:
In re Green, 134 U. S., 377.

ARTICLE XIII.^a

SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

§ 266. Prohibition of slavery and involuntary servitude.

SECTION 2. Congress shall have power to enforce this article by appropriate legislation.

Decisions of the Supreme Court of the United States:

§ 267. Decisions of the court. Dred Scott v. Sanford, 19 How., 393; White v. Hart, 13 Wall., 646; Osborn v. Nicholson, 13 Wall., 654; Slaughter-house Cases, 16 Wall., 36; Ex parte Virginia, 100 U. S., 339; Civil Rights Case, 109 U. S., 3; Plessy v. Ferguson, 163 U. S., 537; Robertson v. Baldwin, 165 U. S., 275; Clyatt v. United States, 197 U. S., 207; Hodges v. U. S., 203 U. S., 1; Bailey v. Alabama, 211 U. S., 452.

^a The thirteenth amendment to the Constitution of the United States was proposed to the legislatures of the several States by the Thirty-eighth Congress, on the 1st of February, 1865, and was declared, in a proclamation of the Secretary of State, dated the 18th of December, 1865, to have been ratified by the legislatures of twenty-seven of the thirty-six States, viz: Illinois, Rhode Island, Michigan, Maryland, New York, West Virginia, Maine, Kansas, Massachusetts, Pennsylvania, Virginia, Ohio, Missouri, Nevada, Indiana, Louisiana, Minnesota, Wisconsin, Vermont, Tennessee, Arkansas, Connecticut, New Hampshire, South Carolina, Alabama, North Carolina, and Georgia.

ARTICLE XIV.^a

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.¹ No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States;² nor shall any State deprive any person of life, liberty, or property,

§ 268. Citizenship;
security and
equal protection
of citizens.

^a The fourteenth amendment to the Constitution of the United States was proposed to the legislatures of the several States by the Thirty-ninth Congress, on the 16th of June, 1866. On the 21st of July, 1868, Congress adopted and transmitted to the Department of State a concurrent resolution declaring that "the legislatures of the States of Connecticut, Tennessee, New Jersey, Oregon, Vermont, New York, Ohio, Illinois, West Virginia, Kansas, Maine, Nevada, Missouri, Indiana, Minnesota, New Hampshire, Massachusetts, Nebraska, Iowa, Arkansas, Florida, North Carolina, Alabama, South Carolina, and Louisiana, being three-fourths and more of the several States of the Union, have ratified the fourteenth article of amendment to the Constitution of the United States, duly proposed by two-thirds of each House of the Thirty-ninth Congress: Therefore *Resolved*, That said fourteenth article is hereby declared to be a part of the Constitution of the United States, and it shall be duly promulgated as such by the Secretary of State." The Secretary of State accordingly issued a proclamation, dated the 28th of July, 1868, declaring that the proposed fourteenth amendment had been ratified, in the manner hereafter mentioned, by the legislatures of thirty-six States, viz: Connecticut, June 30, 1866; New Hampshire, July 7, 1866; Tennessee, July 19, 1866; New Jersey, September 11, 1866 (and the legislature of the same State passed a resolution in April, 1868, to withdraw its consent to it); Oregon, September 19, 1866; Vermont, November 9, 1866; Georgia rejected it November 13, 1866; and ratified it July 21, 1868; North Carolina rejected it December 4, 1866, and ratified it July 4, 1868; South Carolina rejected it December 20, 1866, and ratified it July 9, 1868; New York ratified it January 10, 1867; Ohio ratified it January 11, 1867 (and the legislature of the same State passed a resolution in January, 1868, to withdraw its consent to it); Illinois ratified it January 15, 1867; West Virginia,

without due process of law;³ nor deny to any person within its jurisdiction the equal protection of the laws.⁴

SECTION 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to

§ 270. Apportionment of representation.

January 16, 1867; Kansas, January 18, 1867; Maine, January 19, 1867; Nevada, January 22, 1867; Missouri, January 26, 1867; Indiana, January 29, 1867; Minnesota, February 1, 1867; Rhode Island, February 7, 1867; Wisconsin, February 13, 1867; Pennsylvania, February 13, 1867; Michigan, February 15, 1867; Massachusetts, March 20, 1867; Nebraska, June 15, 1867; Iowa, April 3, 1868; Arkansas, April 6, 1868; Florida, June 9, 1868; Louisiana, July 9, 1868; and Alabama July 13, 1868; Georgia again ratified the amendment February 2, 1870. Texas rejected it November 1, 1866, and ratified February 18, 1870. Virginia rejected it January 19, 1867, and ratified October 8, 1869. The amendment was rejected by Kentucky January 10, 1867; by Delaware February 8, 1867; by Maryland March 23, 1867, and was not afterwards ratified by either State.

Recent decisions of the Supreme Court of the United States:

³ Devine v. Los Angeles, 202 U. S., 313; ⁴ Cox v. Texas, 202 U. S., 446;

³ National Council v. State Council, 203 U. S., 151;

§ 269. Decisions of the court.

³ ⁴ St. Mary's Petroleum Co. v. West Virginia, 203 U. S.,

183; ³ ⁴ Northwestern Life Ins. Co. v. Riggs, 203 U. S.,

243; ³ Atlantic Coast Line v. Florida, 203 U. S., ² ³ ⁴ Martin v. Pittsburg

& Lake Erie R. R., 203 U. S., 284; ² ³ Western Turf Association v. Green-

berg, 204 U. S., 359; ³ Cosmopolitan Club v. Virginia, 208 U. S., 378; ³ Hair-

ston v. Danville & Western Railway, 208 U. S., 598; ³ Northern Pacific

Railway v. Duluth, 208 U. S., 583; ³ ⁴ Disconto Gesellschaft v. Umbreit,

208 U. S., 570; ⁴ Ughbanks v. Armstrong, 208 U. S., 481; ³ ⁴ Ughbanks v.

Armstrong, 208 U. S., 481; ³ ⁴ Muller v. Oregon, 208 U. S., 412; ⁴ Darnell &

Son v. Memphis, 208 U. S., 113; ³ Thompson v. Kentucky, 209 U. S., 340;

³ Central Railroad Co. v. Jersey City, 209 U. S., 473; ³ Longyear v. Toolan,

209 U. S., 414; Hudson Water Co. v. McCarter, 209 U. S., 349; ³ ⁴ Ex parte

Young, 209 U. S., 123; ³ Thompson v. Kentucky, 209 U. S., 340; ⁴ Lang v.

New Jersey, 209 U. S., 467; ³ Londoner v. Denver, 210 U. S., 373; ³ Delmar

vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis

Jockey Club v. Missouri, 210 U. S., 324; ³*Cleveland, Cincinnati, etc., Railway Co. v. Porter*, 210 U. S., 177; ³*Paddell v. City of New York*, 211 U. S., 446; ³*Silz v. Hesterberg*, 211 U. S., 31; ³ ⁴*Home Telephone Co. v. Los Angeles*, 211 U. S., 265; ³ ⁴*McLean v. Arkansas*, 211 U. S., 539; ³*North American Cold Storage Co. v. Chicago*, 211 U. S., 306; ³ ⁴*Lemieux v. Young*, 211 U. S., 489; ³ ⁴*Beers v. Glynn*, 211 U. S., 477; ³*Rusch v. John Duncan Co.*, 211 U. S., 526; ³*Prentiss v. Atlantic Coast Line*, 211 U. S., 210; ¹ ² ³*Twinning v. New Jersey*, 211 U. S., 78; ³ ⁴*Bailey v. Alabama*, 211 U. S., 452; ³ ⁴*Hammond Packing Co. v. Arkansas*, 212 U. S., 322; ³*Moyer v. Peabody*, 212 U. S., 78; ³*Waters-Pierce Oil Co. v. Texas*, 212 U. S., 86; ³*Louisville & Nashville R. R. Co. v. Stock Yards Co.*, 212 U. S., 132; ³*Ontario Land Co. v. Yordy*, 212 U. S., 152; ³ ⁴*Wilcox v. Consolidated Gas Co.*, 212 U. S., 19; ³*Bonner v. Gorman*, 213 U. S., 86; ³*Keerl v. Montana*, 213 U. S., 135; ³ ⁴*Welch v. Swasey*, 214 U. S., 91; ³*Goodrich v. Ferris*, 214 U. S., 71; ³*St. Paul, Minnesota & Manitoba Ry. Co. v. Minnesota*, 214 U. S., 497; ³*Scott County Road Co. v. Hines*, 215 U. S., 336; ⁴*Marbles v. Creecy*, 215 U. S., 63; ³ ⁴*Western Union Telegraph Co. v. Kansas*, 216 U. S., 1; ³*Missouri Pacific Ry. v. Kansas*, 216 U. S., 262; ³*King v. West Virginia*, 216 U. S., 92; ³*Withnell v. Bush Construction Co.*, 216 U. S., 603; ³*Laurel Hill Cemetery v. San Francisco*, 216 U. S., 358; ³*Board of Assessors v. New York Life Insurance Co.*, 216 U. S., 517; ⁴*Southern Ry. Co. v. Greene*, 216 U. S., 400; ⁴*Brown-Forman Co. v. Kentucky*, 217 U. S., 563; ³*Grenada Lumber Co. v. Mississippi*, 217 U. S., 433; ³*Citizens' National Bank v. Kentucky*, 217 U. S., 443; ³*Missouri Pacific Ry. v. Nebraska*, 217 U. S., 196; ³*Boston Chamber of Commerce v. Boston*, 217 U. S., 189; ³*Fay v. Crozier*, 217 U. S., 455; ³ ⁴*Kidd, Dater & Price Co. v. Musselman Grocer Co.*, 217 U. S., 461; ³ ⁴*Southwestern Oil Co. v. Texas*, 217 U. S., 114; ⁴*Standard Oil Co. v. Tennessee*, 217 U. S., 413; ⁴*Williams v. Arkansas*, 217 U. S., 79; ⁴*International Text-Book Co. v. Pigg*, 217 U. S., 91.

of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Each ten years there has been a readjustment of representation (I, 301, footnote). At present the membership of the House is 391 as provided by the apportionment of 1903 (I, 302). While Congress by law apportions the number of Representatives to each State, the State legislatures establish the districts (I, 304). The apportionment act provides that the districts in a State shall be equal to the number of its Representatives, no one district electing more than one Representative (I, 303). But the House has always seated members elected at large in the States, although the law has required election by districts (I, 310, 519). The districts are required to be composed of contiguous and compact territory, and containing as nearly as practicable an equal number of inhabitants (I, 303). Questions have arisen from time to time when a vacancy has occurred soon after a change in districts, with the resulting question whether the vacancy should be filled by election in the old or the new district (I, 311, 312, 327). The House has declined to interfere with the act of a State in changing the boundaries of a State after the apportionment has been made (I, 313).

§ 272. Decision of the court.

Decision of the Supreme Court of the United States:

McPherson v. Blacker, 146 U. S.

SECTION 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the

§ 273. Loyalty as a qualification of Senators and Representatives.

CONSTITUTION OF THE UNITED STATES.

§§ 274, 275.

enemies thereof. But Congress may, by a vote of two-thirds of each House, remove such disability.

Congress has by law removed generally the disabilities arising from the Civil War (30 Stat. L., p. 432). ~~Soon after the war various questions arose under this section (1, 386, 393, 455, 456).~~

SECTION 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

§ 274. Validity of the national debt, etc.

SECTION 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

ARTICLE XV.^a

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

§ 275. Suffrage not to be abridged for race, color, etc.

^a The fifteenth amendment to the Constitution of the United States was proposed to the legislatures of the several States by the Fortieth Congress on the 27th of February, 1869, and was declared, in a proclamation of the Secretary of State, dated March 30, 1870, to have been ratified by the legis-

SECTION 2. The Congress shall have power to enforce this article by appropriate legislation.

United States *v.* Reece et al., 92 U. S., 214; United States *v.* Cruikshank et al., 92 U. S., 542; *Ex parte* Yarbrough, 110 U. S., 651; Neal *v.* Delaware, 103 U. S., 370; United States *v.* Waddell et al., 112 U. S., 76; McPherson *v.* Blacker, 146 U. S., 1; James *v.* Bowman, 190 U. S., 127; Hodges *v.* United States, 203 U. S., 1.

latures of twenty-nine of the thirty-seven States. The dates of these ratifications (arranged in the order of their reception at the Department of State) were: From North Carolina, March 5, 1869; West Virginia, March 3, 1869; Massachusetts, March 9-12, 1869; Wisconsin, March 9, 1869; Maine, March 12, 1869; Louisiana, March 5, 1869; Michigan, March 8, 1869; South Carolina, March 16, 1869; Pennsylvania, March 26, 1869; Arkansas, March 30, 1869; Connecticut, May 19, 1869; Florida, June 15, 1869; Illinois, March 5, 1869; Indiana, May 13-14, 1869; New York, March 17-April 14, 1869 (and the legislature of the same State passed a resolution January 5, 1870, to withdraw its consent to it); New Hampshire, July 7, 1869; Nevada, March 1, 1869; Vermont, October 21, 1869; Virginia, October 8, 1869; Missouri, January 10, 1870; Mississippi, January 15-17, 1870; Ohio, January 27, 1870; Iowa, February 3, 1870; Kansas, January 18-19, 1870; Minnesota, February 19, 1870; Rhode Island, January 18, 1870; Nebraska, February 17, 1870; Texas, February 18, 1870. The State of Georgia also ratified the amendment February 2, 1870.

JEFFERSON'S MANUAL.

JEFFERSON'S MANUAL OF PARLIAMENTARY PRACTICE.^a

SEC. I.—IMPORTANCE OF ADHERING TO RULES.

Mr. Onslow, the ablest among the Speakers of the House of Commons, used to say, "It was a maxim he had often heard when he was a young man, from old and experienced Members, that nothing tended more to throw power into the hands of administration, and

§ 277. Rules as related to the privileges of minorities.

^a Jefferson's Manual was prepared by Thomas Jefferson for his own guidance as President of the Senate in the years of his Vice-Presidency, from 1797 to 1801. In 1837 the House, by rule which still exists, provided that the provisions of the Manual should "govern the House in all cases to which they are applicable and in which they are not inconsistent with the standing rules and orders of the House." In 1880 the committee which revised the rules of the House declared in their report that the Manual, "compiled as it was for the use of the Senate exclusively and made up almost wholly of collations of English parliamentary practice and decisions, it was never especially valuable as an authority in the House of Representatives, even in its early history, and for many years past has been rarely quoted in the House" (V, 6757). This statement, although sanctioned by high authority, is extreme, for in certain parts of the Manual are to be found the foundations of some of the most important portions of the House's practice.

§ 278. The Manual as a statement of parliamentary law.

The Manual is regarded by English parliamentarians as the best statement of what the law of Parliament was at the time Jefferson wrote it. Jefferson himself says, in the preface of the work:

"I could not doubt the necessity of quoting the sources of my information, among which Mr. Hatsel's most valuable book is preeminent; but as he has only treated some general heads, I have been obliged to recur to other

those who acted with the majority of the House of Commons, than a neglect of, or departure from, the rules of proceeding; that these forms, as instituted by our ancestors, operated as a check and control on the actions of the majority, and that they were, in many instances, a shelter and protection to the minority, against the attempts of power." So far the maxim is certainly true, and is founded in good sense, that as it is always in the power of the majority, by their numbers, to stop any improper measures proposed on the part of their opponents, the only weapons by which the minority can defend themselves against similar attempts from those in power are the forms

authorities in support of a number of common rules of practice, to which his plan did not descend. Sometimes each authority cited supports the whole passage. Sometimes it rests on all taken together. Sometimes the authority goes only to a part of the text, the residue being inferred from known rules and principles. For some of the most familiar forms no written authority is or can be quoted, no writer having supposed it necessary to repeat what all were presumed to know. The statement of these must rest on their notoriety.

"I am aware that authorities can often be produced in opposition to the rules which I lay down as parliamentary. An attention to dates will generally remove their weight. The proceedings of Parliament in ancient times, and for a long while, were crude, multiform, and embarrassing. They have been, however, constantly advancing toward uniformity and accuracy, and have now attained a degree of aptitude to their object beyond which little is to be desired or expected.

"Yet I am far from the presumption of believing that I may not have mistaken the parliamentary practice in some cases, and especially in those minor forms, which, being practiced daily, are supposed known to everybody, and therefore have not been committed to writing. Our resources in this quarter of the globe for obtaining information on that part of the subject are not perfect. But I have begun a sketch, which those who come after me will successively correct and fill up, till a code of rules shall

and rules of proceeding which have been adopted as they were found necessary, from time to time, and are become the law of the House, by a strict adherence to which the weaker party can only be protected from those irregularities and abuses which these forms were intended to check, and which the wantonness of power is but too often apt to suggest to large and successful majorities. *2 Hats., 171, 172.*

And whether these forms be in all cases the most rational or not is really not of so great importance. It is much more material that there should be a rule to go by than what that rule is; that there may be a uniformity of proceeding

be formed for the use of the Senate, the effects of which may be accuracy in business, economy of time, order, uniformity, and impartiality."

Jefferson also says in his preface, as to the source most desirable at that time from which to draw principles of procedure:

§ 279. Relations of
the parliamentary
law to the early
practice of
Congress.

"But to what system of rules is he to recur, as supplementary to those of the Senate? To this there can be but one answer: To the system of regulations adopted for the government of some one of the parliamentary bodies within these States, or of that which has served as a prototype to most of them. This last is the model which we have all studied, while we are little acquainted with the modifications of it in our several States. It is deposited, too, in publications possessed by many, and open to all. Its rules are probably as wisely constructed for governing the debates of a deliberative body, and obtaining its true sense, as any which can become known to us; and the acquiescence of the Senate, hitherto, under the references to them, has given them the sanction of their approbation."

In this edition those portions of the Manual which refer exclusively to Senate procedure or which refer to English practice wholly inapplicable to the House of Representatives have been omitted. Paragraphs from the Constitution of the United States have also been omitted, as the Constitution is printed entire in this volume.

§ 281.

in business not subject to the caprice of the Speaker or captiousness of the members. It is very material that order, decency, and regularity be preserved in a dignified public body. 2 *Hats.*, 149.

* * * * *

SEC. III.—PRIVILEGE.

The privileges of members of Parliament, from small and obscure beginnings, have been advancing for centuries with a firm and never yielding pace. Claims seem to have been brought forward from time to time, and repeated, till some example of their admission enabled them to build law on that example. We can only, therefore, state the points of progression at which they now are. It is now acknowledged, 1st. That they are at all times exempted from question elsewhere, for anything said in their own House; that during the time of privilege, 2d. Neither a member himself, his, *order H. of C. 1663, July 16*, wife, nor his servants (*familiāres sui*), for any matter of their own, may be, *Elsynge, 217; 1 Hats., 21; 1 Grey's Deb., 133*, arrested on mesne process, in any civil suit: 3d. Nor be detained under execution, though levied before time of privilege: 4th. Nor impleaded, cited, or subpoenaed in any court: 5th. Nor summoned as a witness or juror: 6th. Nor may their lands or goods be distrained: 7th. Nor their persons assaulted, or characters traduced. And the period of time covered by privi-

§ 281. Privileges
of members of
Parliament.

lege, before and after the session, with the practice of short prorogations under the connivance of the Crown, amounts in fact to a perpetual protection against the course of justice. In one instance, indeed, it has been relaxed by the 10 G. 3, c. 50, which permits judiciary proceedings to go on against them. That these privileges must be continually progressive, seems to result from their rejecting all definition of them; the doctrine being, that "their dignity and independence are preserved by keeping their privileges indefinite; and that 'the maxims upon which they proceed, together with the method of proceeding, rest entirely in their own breast, and are not defined and ascertained by any particular stated laws.'" 1 *Blackst.*, 163, 164.

It was probably from this view of the encroaching character of privilege that the framers of our Constitution, in their care to provide that the laws shall bind equally on all, and especially that those who make them shall not exempt themselves from their operation, have only privileged "Senators and Representatives" themselves from the single act of "arrest in all cases except treason, felony, and breach of the peace, during their attendance at the session of their respective Houses, and in going to and returning from the same, and from being questioned in any other place for any speech or debate in either House." *Const. U. S.*, Art. I, Sec. 6. Under the general

§ 282. Privilege
of Members of
Congress under the
Constitution.

§ 288.

authority "to make all laws necessary and proper for carrying into execution the powers given them," *Const. U. S., Art. II, Sec. 8*, they may provide by law the details which may be necessary for giving full effect to the enjoyment of this privilege. No such law being as yet made, it seems to stand at present on the following ground: 1. The act of arrest is void, *ab initio*. 2 *Stra.*, 989. 2. The member arrested may be discharged on motion, 1 *Bl.*, 166; 2 *Stra.*, 990; or by habeas corpus under the Federal or State authority, as the case may be; or by a writ of privilege out of the chancery, 2 *Stra.*, 989, in those States which have adopted that part of the laws of England. *Orders of the House of Commons, 1550, February 20*. 3. The arrest being unlawful, is a trespass for which the officer and others concerned are liable to action or indictment in the ordinary courts of justice, as in other cases of unauthorized arrest. 4. The court before which the process is returnable is bound to act as in other cases of unauthorized proceeding, and liable, also, as in other similar cases, to have their proceedings stayed or corrected by the superior courts.

§ 288. Privilege
as to going and
returning.

The time necessary for going to, and returning from, Congress, not being defined, it will, of course, be judged of in every particular case by those who will have to decide the case. While privilege was understood in England to extend, as it does here, only to exemption from arrest, *eundo, morando, et redeundo*, the

House of Commons themselves decided that "a convenient time was to be understood." (1580,) 1 *Hats.*, 99, 100. Nor is the law so strict in point of time as to require the party to set out immediately on his return, but allows him time to settle his private affairs, and to prepare for his journey; and does not even scan his road very nicely, nor forfeit his protection for a little deviation from that which is most direct; some necessity perhaps constraining him to it. 2 *Stra.*, 986, 987.

This privilege from arrest, privileges, of course, against all process the disobedience to which is punishable by an attachment of the person; as a subpoena ad respondendum, or testificandum, or a summons on a jury; and with reason, because a Member has superior duties to perform in another place. When a Representative is withdrawn from his seat by summons, the 40,000 people whom he represents lose their voice in debate and vote, as they do on his voluntary absence; when a Senator is withdrawn by summons, his State loses half its voice in debate and vote, as it does on his voluntary absence. The enormous disparity of evil admits no comparison.

The House has decided that the summons of a court to Members to attend and testify constituted a breach of privilege, and § 285. Attitude of the House as to demands of the courts. directed them to disregard the mandate (III, 2661); but in another case wherein Members informed the House that they had been summoned before the grand jury of the District of Columbia, the House authorized them to respond

§§ 286, 287.

(III, 2662). The House, however, has declined to make a general rule permitting Members to waive their privilege, preferring that the Member in each case should apply for permission (III, 2660). Also in maintenance of its privilege the House has refused to permit the Clerk to produce in court, in obedience to a summons, an original paper from the files, but gave the court facilities for making copies (III, 2664, 2666). No officer or employee, except by authority of the House, should produce before any court a paper from the files of the House, nor furnish a copy of any paper except by authority of the House or a statute (III, 2663).

When either House desires the attendance of a Member of the other to give evidence it is the practice to ask the House of which he is a Member that the Member have leave to attend, and the use of a subpoena is of doubtful propriety (III, 1794). But in one case, at least, the Senate did not consider that its privilege forbade the House to summon one of its officers as a witness (III, 1798). But when the Secretary of the Senate was subpoenaed to appear before a committee of the House with certain papers from the files of the Senate, the Senate discussed the question of privilege before empowering him to attend (III, 2665).

So far there will probably be no difference of opinion as to the privileges of the two Houses of Congress; but in the following cases it is otherwise. In December, 1795, the House of Representatives committed two persons of the name of Randall and Whitney for attempting to corrupt the integrity of certain Members, which they considered as a contempt and breach of the privileges of the House; and the facts being proved, Whitney was detained in confinement a fortnight and Randall three weeks, and was reprimanded by the Speaker. In March, 1796, the House of Representatives voted a challenge given to a Member of their House to be a breach of the privileges of the House; but satisfactory apologies and

§ 286. Attitude of one House as to demands of the other for attendance or papers.

§ 287. Power of the House to punish for contempts.

acknowledgments being made, no further proceeding was had. * * *

The cases of Randall and Whitney (II, 1599-1603) were followed in 1818 by the case of John Anderson, a citizen, who for attempted bribery of a Member was arrested, tried, and censured by the House (II, 1606). Anderson appealed to the courts and this procedure finally resulted in a discussion by the Supreme Court of the United States of the right of the House to punish for contempts, and a decision that the House by implication has the power to punish, since "public functionaries must be left at liberty to exercise the powers which the people have intrusted to them," and "the interests and dignity of those who created them require the exertion of the powers indispensable to the attainment of the ends of their creation. Nor is a casual conflict with the rights of particular individuals any reason to be urged against the exercise of such powers" (II, 1607). In 1828 an assault on the President's secretary in the Capitol gave rise to a question of privilege which involved a discussion of the inherent power of the House to punish for contempt (II, 1615). Again in 1832, when the House censured Samuel Houston, a citizen, for assault on a Member for words spoken in debate (II, 1616), there was a discussion by the House of the doctrine of inherent and implied power as opposed to the other doctrine that the House might exercise no authority not expressly conferred on it by the Constitution or the laws of the land (II, 1619). In 1865 the House arrested and censured a citizen for attempted intimidation and assault on a Member (II, 1625); in 1866, a citizen who had assaulted the clerk of a committee of the House in the Capitol was arrested by order of the House, but as there was not time to punish in the few remaining days of the session, the Sergeant-at-Arms was directed to turn the prisoner over to the civil authorities of the District of Columbia (II, 1629); and in 1870 one Woods, who had assaulted a Member on his way to the House, was arrested on warrant of the Speaker, arraigned at the bar, and imprisoned for a term extending beyond the adjournment of the session, although not beyond the term of the existing House (II, 1626-1628).

In 1876 the arrest and imprisonment by the House of Hallet Kilbourn, a contumacious witness, resulted in a decision by the Supreme Court of the United States that the House had no general power to punish for contempt, as in a case wherein it was proposing to coerce a witness in an inquiry not within the constitutional authority of the House. The Court also discussed the doctrine of inherent power to punish, saying in

§ 288. Decision of the court in Anderson's case.

§ 289. Views of the court in Kilbourn's case.

§ 290.

conclusion, "We are of opinion that the right of the House of Representatives to punish the citizen for a contempt of its authority on a breach of its privileges can derive no support from the precedents and practices of the two Houses of the English Parliament, nor from the adjudged cases in which the English courts have upheld these practices. Nor, taking what has fallen from the English judges, and especially the later cases on which we have just commented, is much aid given to the doctrine, that this power exists as one necessary to enable either House of Congress to exercise successfully their function of legislation. This latter proposition is one that we do not propose to decide in the present case, because we are able to decide it without passing upon the existence or nonexistence of such a power in aid of the legislative function (103 U. S., 189; II, 1611). In 1894, in the case of Chapman, another contumacious witness, the Supreme Court affirmed the undoubted right of either House of Congress to punish for contempt in cases to which its power properly extends under the expressed terms of the Constitution (II, 1614). The nature of the punishment which the House may inflict was discussed by the court in Anderson's case (II, 1607).

* * * The editor of the Aurora having, in his paper of February 19, 1800, inserted some paragraphs defamatory of the Senate, and failed in his appearance, he was ordered to be committed. In debating the legality of this order, it was insisted, in support of it, that every man, by the law of nature, and every body of men, possesses the right of self-defense; that all public functionaries are essentially invested with the powers of self-preservation; that they have an inherent right to do all acts necessary to keep themselves in a condition to discharge the trusts confided to them; that whenever authorities are given, the means of carrying them into execution are given by necessary implication; that thus we see the British Parliament exercise the

§ 290. Jefferson's statement of arguments for inherent power to punish for contempt.

right of punishing contempts; all the State Legislatures exercise the same power, and every court does the same; that, if we have it not, we sit at the mercy of every intruder who may enter our doors or gallery, and, by noise and tumult, render proceeding in business impracticable; that if our tranquillity is to be perpetually disturbed by newspaper defamation, it will not be possible to exercise our functions with the requisite coolness and deliberation; and that we must therefore have a power to punish these disturbers of our peace and proceedings. * * *

* * * To this it was answered, that the Parliament and courts of England have cognizance of contempts by the express provisions of their law; that the State Legislatures have equal authority because their powers are plenary; they represent their constituents completely, and possess all their powers, except such as their constitutions have expressly denied them; that the courts of the several States have the same powers by the laws of their States, and those of the Federal Government by the same State laws adopted in each State, by a law of Congress; that none of these bodies, therefore, derive those powers from natural or necessary right, but from express law; that Congress have no such natural or necessary power, nor any powers but such as are given them by the Constitution; that that has given them, directly, exemption from personal arrest, exemption

§ 291. Statement of arguments against the inherent power to punish for contempts.

from question elsewhere for what is said in their House, and power over their own members and proceedings; for these no further law is necessary, the Constitution being the law; that, moreover, by that article of the Constitution which authorizes them "to make all laws necessary and proper for carrying into execution the powers vested by the Constitution in them," they may provide by law for an undisturbed exercise of their functions, e. g., for the punishment of contempts, of affrays or tumult in their presence, &c.; but, till the law be made, it does not exist; and does not exist, from their own neglect; that, in the meantime, however, they are not unprotected, the ordinary magistrates and courts of law being open and competent to punish all unjustifiable disturbances or defamations, and even their own sergeant; who may appoint deputies ad libitum to aid him, *3 Grey, 59, 147, 255*, is equal to small disturbances; that in requiring a previous law, the Constitution had regard to the inviolability of the citizen, as well as of the Member; as, should one House, in the regular form of a bill, aim at too broad privileges, it may be checked by the other, and both by the President; and also as, the law being promulgated, the citizen will know how to avoid offense. But if one branch may assume its own privileges without control, if it may do it on the spur of the occasion, conceal the law in its own breast, and, after the fact committed, make its sentence both the law and the judgment on that fact;

if the offense is to be kept undefined and to be declared only *ex re nata*, and according to the passions of the moment, and there be no limitation either in the manner or measure of the punishment, the condition of the citizen will be perilous indeed. * * *

* * * Which of these doctrines is to prevail, time will decide. Where there is no fixed law, the judgment on any particular case is the law of that single case only, and dies with it. When a new and even a similar case arises, the judgment which is to make and at the same time apply the law, is open to question and consideration, as are all new laws. Perhaps Congress in the mean time, in their care for the safety of the citizen, as well as that for their own protection, may declare by law what is necessary and proper to enable them to carry into execution the powers vested in them, and thereby hang up a rule for the inspection of all, which may direct the conduct of the citizen, and at the same time test the judgments they shall themselves pronounce in their own case.

In 1837 the House declined to proceed with a bill "defining the offense of a contempt of this House, and to provide for the punishment thereof" (II, 1598).

Privilege from arrest takes place by force of the election; and before a return be made a Member elected may be named of a committee, and is to every extent a Member except that he cannot vote until he is sworn. *Memor.*, 107, 108. *D'Ewes*, 642,

§ 292. Jefferson's suggestion that a law might define procedure in cases of contempt.

§ 293. Status of Member-elect as to privilege, oath, committee service, etc.

col. 2; 643, col. 1. Pet. Miscel. Parl., 119. Lex. Parl., c. 23. 2 Hats., 22, 62.

The Constitution of the United States limits the broad Parliamentary privilege to the time of attendance on sessions of Congress, and of going to and returning therefrom. In a case wherein a Member was imprisoned during a recess of Congress, he remained in confinement until the House, on assembling, liberated him (III, 2676).

It is recognized in the practice of the House that a member may be named of a committee before he is sworn, and in some cases Members have not taken the oath until long afterwards (IV, 4483). In one case, wherein a Member did not appear to take the oath, the Speaker with the consent of the House appointed another Member to the committee place (IV, 4484). The status of a Member-elect under the Constitution undoubtedly differs greatly from the status of a Member-elect under the law of Parliament. In various inquiries by committees of the House this question has been examined, with the conclusions that a Member-elect becomes a Member from the very beginning of the term to which he was elected (I, 500), that he is as much an officer of the Government before taking the oath as afterwards (I, 185), and that his status is distinguished from that of a Member who has qualified (I, 183, 184). Members-elect may resign or decline before taking the oath (II, 1230-1233, 1235), and in one case a Member elect was expelled (I, 476; II, 1262). The names of Members who have not been sworn are not entered on the roll from which the yeas and nays are called for entry on the Journal (V, 6048).

Every man must, at his peril, take notice who are

§ 294. Relations of
Members and
others to privilege.

members of either House returned of
record. *Lex. Parl., 23; 4 Inst., 24.*

On complaint of a breach of privilege, the party may either be summoned, or sent for in custody of the sergeant. *1 Grey, 88, 95.*

The privilege of a Member is the privilege of the House. If the Member waive it without leave, it is a ground for punishing him, but cannot in effect waive the privilege of the House. *3 Grey, 140, 222.*

Although the privilege of Members of the House of Representatives is limited by the Constitution, these provisions of the Parliamentary law are applicable, and persons who have attempted to bribe Members (II, 1599, 1606), assault them for words spoken in debate (II, 1617, 1625) or interfere with them while on the way to attend the sessions of the House (II, 1626), have been arrested by order of the House by the Sergeant-at-Arms, "wherever to be found." The House has declined to make a general rule to permit Members to waive their privilege in certain cases, preferring to give or refuse permission in each individual case (III, 2660-2662).

For any speech or debate in either House, they shall not be questioned in any other place.

§ 295. Parliamentary law as to questioning a Member in another place for speech or debate.

Const. U. S., I, 6; S. P. protest of the Commons to James I, 1621; 2 Rapin, No. 54 pp., 211, 212. But this is restrained to things done in the House in a parliamentary course. *1 Rush, 663.* For he

is not to have privilege contra morem parliamentarium, to exceed the bounds and limits of his place and duty. *Com. p.*

§ 296. Relation of the courts to parliamentary privilege.

If an offense be committed by a member in the House, of which the House has cognizance, it is an infringement of their right for any person or court to take notice of it till the House has punished the offender or referred him to a due course. *Lex. Parl., 63.*

Privilege is in the power of the House, and is a restraint to the proceeding of inferior courts, but not of the House itself. *2 Nelson, 450; 2 Grey, 399.* For whatever is spoken in the House is subject to the censure of the House; and offenses of this kind have been severely punished by calling the person to the bar

§§ 297, 298.

to make submission, committing him to the tower, expelling the House, &c. *Scob.*, 72; *L. Parl.*, c. 22.

§ 297. Breach of privilege to refuse to put a question which is in order.

It is a breach of order for the Speaker to refuse to put a question which is in order. 1 *Hats.*, 175-6; 5 *Grey*, 133.

Where the Clerk, presiding during organization of the House, declined to put a question, a Member put the question from the floor (I, 67).

And even in cases of treason, felony, and breach of the peace, to which privilege does not extend as to substance, yet in Parliament a member is privileged as to the mode of proceeding. The case is first to

§ 298. Parliamentary law of privilege as related to treason, felony, etc.

be laid before the House, that it may judge of the fact and of the grounds of the accusation, and how far forth the manner of the trial may concern their privilege; otherwise it would be in the power of other branches of the government, and even of every private man, under pretenses of treason, &c., to take any man from his service in the House, and so, as many, one after another, as would make the House what he pleaseth. *Dec'l of the Com. on the King's declaring Sir John Hotham a traitor.* 4 *Rushw.*, 586. So, when a member stood indicted for felony, it was adjudged that he ought to remain of the House till conviction; for it may be any man's case, who is guiltless, to be accused and indicted of felony, or the like crime. 23 *El.*, 1580; *D'Ewes*, 283, col. 1; *Lex. Parl.*, 133.

Where Members of the House of Representatives have been arrested by the State authorities the cases have not been laid first before the House; but when the House has learned of the proceedings, it has investigated to

ascertain if the crime charged was actually within the exceptions of the Constitution (III, 2673), and in one case where it found a Member imprisoned for an offense not within the exceptions it released him by the hands of its own officer (III, 2676).

The House has not usually taken action in the infrequent instances wherein Members have been indicted for felony, and in one or two instances Members under indictment or pending appeal on conviction, have been appointed to committees (IV, 4479). A Senator after indictment was omitted from committees at his own request (IV, 4479), and a Member who had been convicted in one case did not appear in the House during the Congress (IV, 4484, footnote). A Senator in one case withdrew from the Senate pending his trial (II, 1278), and on conviction resigned (II, 1282). In this case the Senate, after the conviction, took steps looking to action although an application for rehearing on appeal was pending (II, 1282).

When it is found necessary for the public service to put a Member under arrest, or when, on any public inquiry, matter comes out which may lead to affect the person of a member, it is the practice immediately to acquaint the House, that they may know the reasons for such a proceeding, and take such steps as they think proper. *2 Hats., 259.* Of which see many examples. *Ib., 256, 257, 258.* But the communication is subsequent to the arrest. *1 Blackst., 167.*

It is highly expedient, says Hatsel, for the due preservation of the privileges of the separate branches of the legislature, that neither should encroach on the other, or interfere in any matter depending before them, so as to preclude, or even influence, that freedom of debate which is essential to a free council. They are, therefore, not to take

§ 299. Practice as to Members indicted or convicted.

§ 300. Parliamentary law as to arrest of a Member.

§ 301. A breach of privilege for one House to encroach or interfere as to the other.

§§ 302, 303.

notice of any bills or other matters depending, or of votes that have been given, or of speeches which have been held, by the members of either of the other branches of the legislature, until the same have been communicated to them in the usual parliamentary manner. *2 Hats.*, 252; *4 Inst.*, 15; *Seld. Jud.*, 53.

Thus the King's taking notice of the bill for suppressing soldiers, depending before the House; his proposing a provisional clause for a bill before it was presented to him by the two Houses; his expressing displeasure against some persons for matters moved in Parliament during the debate and preparation of a bill, were breaches of privilege; *2 Nalson*, 743; and in 1783, December 17, it was declared a breach of fundamental privileges, &c., to report any opinion or pretended opinion of the King on any bill or proceeding depending in either House of Parliament, with a view to influence the votes of the members. *2 Hats.*, 251, 6.

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SEC. VI.—QUORUM.

* * * * *

In general the chair is not to be taken till a quorum for business is present; unless, after due waiting, such a quorum be despaired of, when the chair may be taken and the House adjourned. And whenever, during business,

§ 303. Necessity of a quorum during business, including debate.

it is observed that a quorum is not present, any member may call for the House to be counted, and being found deficient, business is suspended. *2 Hats., 125, 126.*

In the House of Representatives the Speaker takes the Chair at the hour at which the House stood adjourned, the question of quorum not being considered unless raised (IV, 2733). According to the earlier and later practice of the House the presence of a quorum is necessary during debate and other business (IV, 2935-2949).

SEC. VII.—CALL OF THE HOUSE.

On the call of the House, each person rises up as he is called, and answereth; the absentees are then only noted, but no excuse to be made till the House be fully called over.

§ 304. Parliamentary rules for call of the House.

Then the absentees are called a second time, and if still absent, excuses are to be heard. *Ord. House of Commons, 92.*

They rise that their persons may be recognized; the voice, in such a crowd, being an insufficient verification of their presence. But in so small a body as the Senate of the United States, the trouble of rising cannot be necessary.

Orders for calls on different days may subsist at the same time. *2 Hats., 72.*

Rule XV, sections 2 and 4, of the House of Representatives provides for a procedure on call of the House. Members of the House do not rise on answering.

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SEC. IX.—SPEAKER.

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When but one person is proposed, and no objection made, it has not been usual in Parliament to put any question to the House; but without a question the members proposing him conduct him to the chair. But if there be objection, or another proposed, a question is put by the Clerk. *2 Hats., 158.* As are also questions of adjournment. *6 Grey, 406.* Where the House debated and exchanged messages and answers with the King for a week without a Speaker, till they were prorogued. They have done it *de die in diem* for fourteen days. *1 Chand., 331, 335.*

§ 305. Election of Speaker.

The Speaker of the House of Representatives was first chosen by ballot, but since 1839 has been chosen by viva voce vote on a roll call (I, 187, 211). The Clerk appoints tellers for this election (I, 217), but the House, and not the Clerk, decides by what method it shall elect (I, 210). The motion to proceed to the election of Speaker is privileged (I, 212, 214) and debatable unless the previous question be ordered (I, 213). In 1860 the voting for Speaker proceeded slowly, being interspersed with debate (I, 223), and in one instance the House asked candidates for Speaker to state their views before proceeding to election (I, 218). In 1809 it was held that the Speaker should be elected by a majority of all present (I, 215), and in 1879 that he might be elected by a majority of those present, if a quorum, and that a majority of all the Members was not required (I, 216). In two instances the House chose a Speaker by plurality of votes, but confirmed the choice by majority vote (I, 221). On several occasions the choice of Speaker has been delayed for several weeks by contests (I, 222; V, 5356, 6647, 6649).

In the Senate, a President pro tempore, in the absence of the Vice-President, is proposed and chosen by ballot. His office is understood to be determined on the Vice-President's appearing and taking the chair, or at the meeting of the Senate after the first recess.

§ 306. Election of President pro tempore of the Senate.

In the later practice the President pro tempore has usually been chosen by resolution. In 1876 the Senate determined that the tenure of office of a President pro tempore elected at one session does not expire at the meeting of Congress after the first recess, the Vice-President not having appeared to take the chair; that the death of the Vice-President does not have the effect to vacate the office of President pro tempore; and that the President pro tempore holds office at the pleasure of the Senate (II, 1417).

Where the Speaker has been ill, other Speakers pro tempore have been appointed. Instances of this are 1 *H.*, 4. Sir John Cheyney, and Sir William Sturton, and in 15 *H.*, 6. Sir John Tyrrel, in 1656, January 27; 1658, March 9; 1659, January 13.

Sir Job Charlton ill, Seymour chosen, 1673, February 18.

Seymour being ill, Sir Robert Sawyer chosen, 1678, April 15.

Sawyer being ill, Seymour chosen.

Not merely pro tempore. 1 *Chand.*, 169, 276, 277.

Thorpe in execution, a new Speaker chosen, 31 *H. VI*, 3 *Grey*, 11; and March 14, 1694, Sir John Trevor chosen. There have been no later instances. 2 *Hats.*, 161; 4 *Inst.*, 8; *L. Parl.*, 263.

The House of Representatives, by Rule I, § 7, has provided for appointment and election of Speakers pro tempore.

§§ 308, 309.

A Speaker may be removed at the will of the House, and a Speaker pro tempore appointed. 2 *Grey*, 186; 5 *Grey*, 134.

The House of Representatives has never removed a Speaker; but it has on several occasions removed or suspended other officers, as Clerk and Doorkeeper (I, 287-290, 292; II, 1417), who are officers classed by the Constitution in the phrase "the House of Representatives shall choose their Speaker and other officers." A resolution for the removal of an officer is presented as a matter of privilege (I, 284-286).

SEC. X.—ADDRESS.

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A joint address of both Houses of Parliament is read by the Speaker of the House of Lords. § 309. Addresses to the President. It may be attended by both Houses in a body, or by a Committee from each House, or by the two Speakers only. An address of the House of Commons only may be presented by the whole House, or by the Speaker, 9 *Grey*, 473; 1 *Chandler*, 298, 301; or by such particular members as are of the privy council. 2 *Hats.*, 278.

In the first years of Congress the President annually delivered an address to the two Houses in joint meeting, and the House of Representatives then prepared an address, which the Speaker, attended by the House, carried to the President. A joint rule of 1789 also provided for the presentation of joint addresses of the two Houses to the President (V, 6630). In 1801 President Jefferson abandoned the custom of addressing the two Houses and sent instead "a message in writing." Since 1801 the annual message has always been sent in writing (V, 6629). In 1876 the joint rules of the House were abrogated, that providing for the joint address included (V, 6782-6787), but the practice of addresses to the President ceased in 1801.

SEC. XI.—COMMITTEES.

Standing committees, as of Privileges and Elections, &c., are usually appointed at the first meeting, to continue through the session. The person first named is generally permitted to act as chairman. But this is a matter of courtesy; every committee having a right to elect their own chairman, who presides over them, puts questions, and reports their proceedings to the House. *4 Inst.*, 11, 12; *Scob.*, 9; *1 Grey*, 122.

§ 310. Appointment of standing committees; and designation and duties of chairmen thereof.

The House of Representatives, by Rule X, provides for the election by the House of committees and their respective chairmen. In the latest practice they continue through the Congress (IV, 4448). The House by Rule X, § 3, provides for the selection of chairman, and the practice indicates that the rule contemplates a selection of chairman by the members of the committee if they may desire to exercise the authority (IV, 4513, 4524-4530). A committee may order its report to be made by the chairman, or by some other member (IV, 4669), even by a member of the minority party (IV, 4672, 4673); and the chairman sometimes submits a report in which he has not concurred (IV, 4670).

At these committees the members are to speak standing, and not sitting; though there is reason to conjecture it was formerly otherwise. *D'Ewes*, 630, col. 1; *4 Parl. Hist.*, 440; *2 Hats.*, 77.

§ 311. Parliamentary law as to debate in standing and select committees.

Their proceedings are not to be published, as they are of no force till confirmed by the House, *Rushw.*, part 3, vol. 2, 74; *3 Grey*, 401; *Scob.*, 39. * * *

§ 312. Secrecy of committee procedure.

In the House of Representatives it is entirely within rule and usage for a committee to conduct its proceedings in secret (IV, 4558-4564), and the

§§ 313-315.

House itself may not abrogate the secrecy of a committee's proceedings except by suspending the rule (IV, 4565). In one case the House authorized the clerk of a committee to disclose by deposition its proceedings (III, 2604). Where a committee takes testimony it is sometimes very desirable that the proceedings be secret (III, 1694), as in the investigation in the Bank of the United States in 1834, when the committee determined that its proceedings should be confidential, not to be attended by any person not invited or required (III, 1732). It is for the committee to determine, in its discretion, whether the proceedings of the committee shall be open or not. Thus, in the case of Roberts, the committee permitted its meetings to be attended by the public, and allowed its proceedings to be published (I, 475, footnote)

§ 313. Reception of petitions by committees.

* * * Nor can they receive a petition but through the House. *9 Grey, 412.*

§ 314. Parliamentary law of procedure when a committee inquiry involves a Member.

When a committee is charged with a inquiry, if a Member prove to be involved, they can not proceed against him, but must make a special report to the House; whereupon the Member is heard in his place, or at the bar, or a special authority is given to the committee to inquire concerning him. *9 Grey, 523.*

§ 315. Practice of House when a committee inquiry involves a Member.

While the authority of this principle has not been questioned by the House, there have in special instances been deviations from it. Thus, in 1832, when a Member had been slain in a duel, and the fact was notorious that all the principals and seconds were Members of the House, the committee, charged only with investigating the causes and whether or not there had been a breach of privilege, reported with their findings recommendations for expulsion and censure of the Members found to be implicated. There was criticism of this method of procedure as deviating from the rule of Jefferson's Manual, but the House did not recommit the report (II, 1644). In 1857, when a committee charged with inquiring into accusations against Members not named found certain Members implicated, they gave them copies of the testimony and opportunities to explain to the committee, under oath or otherwise, as they individually might prefer (III, 1845), but reported recommendations for expulsion with-

out first seeking the order of the House (II, 1275; III, 1844). In 1859 and 1892 a similar procedure occurred (III, 1831, 2637). But the House, in a case wherein an inquiry had incidentally involved a Member, evidently considered the parliamentary law as applicable, since it admitted as of privilege and agreed to a resolution directing the committee to report the charges (III, 1843). And in cases wherein testimony taken before a joint committee incidentally impeached the official characters of a Member and a Senator, the facts in each case were reported to the House interested (III, 1854).

And where one House, by its committee, has found a Member of the other implicated, the testimony has been transmitted (II, 1276; III, 1850, 1852, 1853). Where such testimony was taken in open session of the committee, it was not thought necessary that it be under seal when sent to the other House (III, 1851).

§ 317. Duty of chairman of a committee when the House sits.

So soon as the House sits, and a committee is notified of it, the chairman is in duty bound to rise instantly, and the members to attend the service of the House. 2 Nals., 319.

No committee of the House, except the Committee on Rules, may, without special leave, sit during the sitting of the House (Rule XI, § 62). Leave for a committee to sit during sessions of the House does not release its members from liability to arrest during a call of the House (IV, 3020). A request that a committee have leave to sit during sessions of the House has no privileged status in the order of business, and may be prevented by a single objection (IV, 4547).

It appears that on joint committees of the Lords and Commons each committee acted integrally in the following instances: 7 *Grey*, 261, 278, 285, 338; 1 *Chandler*, 357, 462. In the following instances it does not appear whether they did or not: 6 *Grey*, 129; 7 *Grey*, 213, 229, 321.

It is the practice in Congress that joint committees shall vote per capita, and not as representatives of the two Houses (IV, 4425), although the membership from the House of Representatives is usually, but not always (IV,

§ 319.

4410), larger than that from the Senate (III, 1946; IV, 4426-4431). But ordinary committees of conference appointed to settle differences between the two Houses are not considered joint committees, and the managers of the two Houses vote separately (V, 6336). A quorum of a joint committee seems to have been considered to be a majority of the whole number rather than a majority of the membership of each House (IV, 4424). The first named of the Senate members acted as chairman in one notable instance (IV, 4424), and in another the joint committee elected its chairman (IV, 4447).

SEC. XII.—COMMITTEE OF THE WHOLE.

§ 319. Parli-
mentary usage as
to Committee of
the Whole.

The speech, messages, and other matters of great concernment are usually referred to a Committee of the Whole House (6 *Grey*, 311), where general principles are digested in the form of resolutions, which are debated and amended till they get into a shape which meets the approbation of a majority. These being reported and confirmed by the House are then referred to one or more select committees, according as the subject divides itself into one or more bills. *Scob.*, 36, 44. Propositions for any charge on the people are especially to be first made in a Committee of the Whole. 3 *Hats.*, 127. The sense of the whole is better taken in committee, because in all committees everyone speaks as often as he pleases. *Scob.*, 49. * * *

This provision is largely obsolete, the House of Representatives having by its rules and practice provided specifically for procedure in Committee of the Whole, and having also by its rules for the order of business left no privileged status for motions to go into Committee of the Whole on matters not already referred to that committee. The Committee of the Whole no longer originates resolutions or bills, but receives such as have been formulated by standing or select committees and referred to it; and when it reports, the House usually acts at once on the report without reference to select or other committees (IV, 4705). The only survival of the parlia-

mentary usage is the practice of referring annual messages of the President to Committee of the Whole, to be there considered and reported, with recommendations for the reference of the various portions to the proper standing or select committees (V, 6621, 6622).

* * * They generally acquiesce in the chairman named by the Speaker; but, as well as all other committees, have a right to elect one, some member, by consent, putting the question. *Scob.*, 36; *3 Grey*, 301. * * *

§ 320. Selection of chairman of Committee of the Whole.

The House of Representatives (by Rule XXIII, § 1) gives the authority to appoint the Chairmen of the Committee of the Whole to the Speaker (IV, 4704).

* * * The form of going from the House into committee, is for the Speaker, on motion, to put the question that the House do now resolve itself into a Committee of the Whole to take into consideration such a matter, naming it. If determined in the affirmative, he leaves the chair and takes a seat elsewhere, as any other Member; and the person appointed chairman seats himself at the Clerk's table. *Scob.*, 36. * * *

This is the form in the House of Representatives, except that the Chairman of the Committee of the Whole seats himself in the Speaker's chair.

* * * Their quorum is the same as that of the House; and if a defect happens, the chairman, on a motion and question, rises, the Speaker resumes the chair and the chairman can make no other report than to inform the House of the cause of their dissolution. * * *

§ 321. Form of going into Committee of the Whole.

§ 322. Quorum in Committee of the Whole.

§§ 823, 824.

Until 1890 the quorum of the Committee of the Whole of the House of Representatives was the same as the quorum of the House; but in 1890 the rule (XXIII, § 2) fixed it at one hundred (IV, 2966). The same rule provides specifically the procedure in case of failure of a quorum.

* * * If a message is announced during a committee, the Speaker takes the chair and receives it, because the committee can not. *2 Hats., 125, 126.*

§ 823. Rising of committee for reception of messages.

In the House of Representatives the committee rises informally to receive a message, without question being put (IV, 4786, footnote); but at this rising the House may not have the message read or transact other business except by unanimous consent (IV, 4787-4791).

In a Committee of the Whole, the tellers on a division differing as to numbers, great heats and confusion arose, and danger of a decision by the sword. The Speaker took the chair, the mace was forcibly laid on the table; whereupon the Members retiring to their places, the Speaker told the House "he had taken the chair without an order to bring the House into order." Some excepted against it; but it was generally approved as the only expedient to suppress the disorder. And every Member was required, standing up in his place, to engage that he would proceed no further in consequence of what had happened in the grand committee, which was done. *3 Grey; 128.*

§ 824. Quarrels in Committee of the Whole, and duty of the Speaker in relation thereto.

In the House of Representatives the Speaker has on several occasions taken the chair "without an order to bring the House into order" (II, 1648-1653), but that being accomplished he may yield to the chairman that the committee may rise in due form (II, 1349). In one instance, a Member having defied and insulted the chairman, he left the chair, and, on the chair being taken by the Speaker, reported the facts to the House (II, 1653). In several cases Members who have quarrelled have made explanation and

reconciled their difficulties (II, 1651), or have been compelled by the House to apologize "for violating its privileges and offending its dignity" (II, 1648, 1650).

In the House of Representatives one-fifth of a quorum orders tellers.

A Committee of the Whole being broken up in disorder, and the chair resumed by the Speaker without an order, the House was adjourned. The next day the committee was considered as thereby dissolved, and the subject again before the House; and it was decided in the House, without returning into committee. *3 Grey, 130.*

This provision is obsolete, since in the practice of the House of Representatives there are but two committees of the whole, which are in their nature standing committees, with calendars of business. They are never dissolved, and bills remain on their calendars until reported in the regular manner after consideration (IV, 4705). When the Speaker restores order he usually yields the chair to the chairman, thus permitting the committee later to rise in due form (II, 1349).

No previous question can be put in a committee; nor can this committee adjourn as others may; but if their business is unfinished, they rise, on a question, the House is resumed, and the chairman reports that the Committee of the Whole have, according to order, had under their consideration such a matter, and have made progress therein; but not having had time to go through the same, have directed him to ask leave to sit again. Whereupon a question is put on their having leave, and on the time the House will again resolve itself into a com-

§ 325. Effect of breaking up of Committee of the Whole by disorder.

§ 326. Motions for previous question and to adjourn not used in Committee of the Whole.

§§ 327, 328.

mittee. *Scob.*, 38. But if they have gone through the matter referred to them, a member moves that the committee may rise, and the chairman report their proceedings to the House; which being resolved, the chairman rises, the Speaker resumes the chair, the chairman informs him that the committee have gone through the business referred to them, and that he is ready to make report when the House shall think proper to receive it. If the House have time to receive it, there is usually a cry of "now, now," whereupon he makes the report; but if it be late, the cry is "to-morrow, to-morrow," or "Monday," etc., or a motion is made to that effect, and a question put that it be received to-morrow, &c. *Scob.*, 38.

In the practice of the House the previous question and motion to adjourn are not admitted in Committee of the Whole; but the rules (XXIII, § 5, 6) provide for closing both the general and five-minute debate. When the committee rises without concluding a matter the chairman reports that they "have come to no resolution thereon;" but leave to sit again is not asked in the modern practice. Nor is permission of the House asked when the chairman reports a matter concluded in committee. The report is made and received as a matter of course, and is thereupon before the House for action.

The Speaker recognizes only reports from the Committee of the Whole made by the chairman thereof (V, 6987), and a matter alleged to have arisen therein but not reported may as to reception of reports of Committee of the Whole. not be brought to the attention of the House, even on the claim that a question of privilege is involved (IV, 4912). In one instance, however, the committee reported with a bill a resolution relating to an alleged breach of privilege (V, 6986). When a bill is reported the Speaker must assume that it has passed through all the stages necessary for the report (IV, 4916). When the committee reported not only what it had done but by whom it had been prevented from doing other things, the Speaker held that the House

might not amend the report, which stood (IV, 4909). But a committee may not report a recommendation which, if carried into effect, would change a rule of the House (IV, 4907, 4908). When an amendment is reported by the committee it may not be withdrawn, and a question as to its validity is not considered by the Speaker (IV, 4900). When a committee directed by order of the House to consider certain bills, reported also certain other bills, the Speaker held that so much of the report as related to the latter bills could be received only by unanimous consent (IV, 4911). When a report is ruled out as in excess of the committee's power, the accompanying bill stands recommitted (IV, 4784, 4907).

The Committee of the Whole, like any other committee, may amend a proposition either by an ordinary amendment or by a substitute amendment (IV, 4899), but these amendments must be reported to the House for action.

§ 329. Amendments in Committee of the Whole.

Amendments rejected by the committee are not reported (IV, 4877). Ordinarily all amendments must be disposed of before the committee may report (IV, 4752-4758); but sometimes a special order requires a report at a specified time, in which case pending amendments are reported (IV, 3225-3228) or not (IV, 4910) as the terms of the order may direct. The practice of the House, based originally on a rule (IV, 4904), requires amendments to be reported from the Committee of the Whole in their perfected forms, and this holds good even in the case of an amendment in the nature of a substitute, which may have been amended freely (IV, 4900-4903). If a Committee of the Whole amend a paragraph and subsequently strike out the paragraph as amended, the first amendment fails, and is not reported to the House or voted on (IV, 4898).

All amendments to a bill reported from the Committee of the Whole stand on an equal footing and must be voted on by the House (IV, 4871) in the order in which they are reported, although they may be inconsistent, one with another (IV, 4881, 4882). Two amendments being reported as distinct were considered independently, although apparently one was a proviso attaching to the other (IV, 4905); and an entire and distinct amendment may not be divided, but must be voted on by the House as a whole (IV, 4883-4892). It is a frequent practice for the House by upanimous consent, to act at once on all the amendments to a bill reported from the Committee of the Whole, but it is the right of any Member to demand a separate vote on any amendment (IV, 4893, 4894). When a bill is reported with amendments, it is in order to submit additional amendments, but the first question is on the committee amendments (IV, 4872-4876); but the opportunity to debate or make additional amendments

§ 330. Committee of the Whole amendments in the House.

§§ 331-333.

depends on the will of the House as expressed on a motion for the previous question (IV, 4895). The fact that a proposition has been rejected by the Committee of the Whole does not prevent it from being offered as an amendment when the subject comes up in the House (IV, 4878-4880). A substitute amendment may be offered to a bill reported from committee, and then the previous question may be ordered on the substitute, on all other amendments, and on the bill to final passage (V, 5472). An amendment in the nature of a substitute reported from committee is treated like any other amendment (V, 5341).

Where a series of bills are reported from Committee of the Whole, the House considers them in the order in which they are reported (IV, 4869, 4870). A proposition reported for action has precedence over an independent resolution on the same subject offered by a Member from the

§ 331. Bills from Committee of the Whole in the House.

floor (V, 6986), and where a bill and a resolution relating to an alleged breach of privilege were reported together the question was put first on the bill (V, 6986). A bill read in full and considered in Committee of the Whole (IV, 3409, 3410), or presumed to have been so read (IV, 4916), is not read in full again in the House when reported and acted on. The Chairman of the Committee of the Whole which reports a bill does not become entitled to prior recognition for debate in the House (II, 1453); but on an adverse report an opponent is recognized to make a motion for disposition of the bill (IV, 4897). The recommendation of the committee being before the House, the motion to carry out the recommendation is usually considered as pending without being offered from the floor (IV, 4896), but when a bill was reported with a recommendation that it lie on the table, a question was raised as to whether or not this motion, which prevents debate, should be considered as pending (IV, 4897).

A motion to discharge the Committee of the Whole from the consideration of a matter committed to it is not privileged as against a demand for the regular order (IV, 4917). When the committee is discharged from consideration of a bill the House, in lieu of the report of the chairman, accepts the minutes of the Clerk as evidence of amendments agreed to (IV, 4922).

§ 332. Discharge of the Committee of the Whole.

§ 333. Application of House rules in Committee of the Whole.

In other things the rules of proceedings are to be the same as in the House. *Scob.*, 39.

The House of Representatives provides by rule (XXIII, § 8) that the rules of proceeding in the House shall apply in Committee of the Whole so far as they may be applicable.

SEC. XIII.—EXAMINATION OF WITNESSES.

Common fame is a good ground for the House to proceed by inquiry, and even to accusation. *Resolution House of Commons, 1 Car., 1, 1625; Rush, L. Parl., 115; Grey, 16-22, 92; 8 Grey, 21, 23, 27, 45.*

§ 334. Common fame as ground for investigation.

In the House of Representatives common fame has been held sufficient to justify procedure for inquiry (III, 2701), as in a case wherein it was stated on the authority of "common rumor" that a Member had been menaced (III, 2678). The House also has voted to investigate with a view to impeachment on the basis of common fame, as in the cases of Judges Chase (III, 2342), Humphreys (III, 2385), and Durell (III, 2506).

Witnesses are not to be produced but where the House has previously instituted an inquiry, *2 Hats., 102, 3 Grey, 51.*

§ 335. The production of witnesses at an inquiry.

In the House of Representatives witnesses are summoned in pursuance and by virtue of the authority conferred on a committee by the House to send for persons and papers (III, 1750). Even in cases wherein the rules (Rule XI, § 62) give to certain committees the authority to investigate without securing special permission, authority must be obtained before the production of testimony may be compelled (IV, 4316). The rules require that subpoenas be signed by the Speaker (Rule I, § 4) and attested and sealed by the Clerk (Rule III, § 3). Sometimes the House authorizes issue of subpoenas during a recess of Congress and empowers the Speaker to sign them (III, 1806), and in one case the two Houses, by concurrent resolution, empowered the Vice-President and Speaker to sign during a recess (III, 1763).

When any person is examined before a committee or at the bar of the House, any Member wishing to ask the person a question must address it to the Speaker or chairman, who repeats the question to the person, or says

§ 336. Examination of witnesses in the House and in committee.

to him, "You hear the question—answer it." But if the propriety of the question be objected to, the Speaker directs the witness, counsel, and parties to withdraw; for no question can be moved or put or debated while they are there. *2 Hats., 108.* Sometimes the questions are previously settled in writing before the witness enters. *Ib., 106, 107; 8 Grey, 64.* The questions asked must be entered in the journals. *3 Grey, 81.* But the testimony given in answer before the House is never written down; but before a committee, it must be, for the information of the House, who are not present to hear it. *7 Grey, 52, 334.*

The Committee of the Whole of the House of Representatives was charged with an investigation in 1792, but the procedure was wholly exceptional (III, 1804), although a statute still empowers the Chairman of the Committee of the Whole, as well as the Speaker, chairmen of select or standing committees, and Members to administer oaths to witnesses (III, 1769). Most inquiries, in the modern practice, are conducted by select or standing committees, and these in each case determine how they will conduct examinations (III, 1773, 1775). In one case a committee permitted a Member of the House not of the committee to examine a witness (III, 2403). Usually these investigations are reported stenographically, thus making the questions and answers of record for report to the House.

The House, in its earlier years, arraigned and tried at its bar persons, not
 § 337. Earlier and later practice as to inquiries at the bar of the House. Members, charged with violation of its privileges, as in the cases of Randall, Whitney (II, 1599–1603), Anderson (II, 1606), and Houston (II, 1616); but in the case of Woods, charged with breach of privilege in 1870 (II, 1626–1628), the respondent was arraigned before the House, but was heard in his defense by counsel and witnesses before a standing committee. At the conclusion of that investigation the respondent was brought to the bar of the House while the House voted his punishment (II, 1628). The House also arraigns at its bar contumacious witnesses before taking steps to punish by its own action or through the courts (III, 1685). In examinations at its bar the House has adopted forms of procedure as to questions (II, 1633, 1768), providing that they be asked through the Speaker (II,

1602, 1606) or by a committee (II, 1617; III, 1668). And the questions to be asked have been drawn up by a committee, even when put by the Speaker (II, 1633). In the earlier practice the answer of a witness at the bar was not written down (IV, 2874); but in the later practice the answers appear in the Journal (III, 1668). The person at the bar withdraws while the House passes on an incidental question (II, 1633; III, 1768).

If either House have occasion for the presence of a person in custody of the other, they ask the other their leave that he may be brought up to them in custody. § 338. Procuring attendance of a witness in custody of the other House. *Hats.*, 52.

A Member, in his place, gives information to the House of what he knows of any matter under hearing at the bar. § 339. Members as witnesses. *Jour. H. of C.*, Jan. 22, 1744-5.

At an examination at the bar of the House in 1795 both the written information given by Members and their verbal testimony were required to be under oath (II, 1602). In a case not of actual examination at the bar, but wherein the House was deliberating on a proposition to order investigation, it demanded by resolution that certain Members produce papers and information (III, 1726, 1811). Members often give testimony before committees of investigation, and in at least one case the Speaker has thus appeared (III, 1776). But in a case wherein a committee summoned a Member to testify as to a statement made by him in debate he protested that it was an invasion of his constitutional privilege (III, 1777, 1778). In one instance the chairman of an investigating committee administered the oath to himself and testified (III, 1821). The House, in an inquiry preliminary to an impeachment trial, gave leave to its managers to examine Members, and leave to its Members to attend for that purpose (III, 2033).

Either House may request, but not command, the attendance of a Member of the other. § 340. Method of obtaining testimony of a Member of the other House. They are to make the request by message of the other House, and to express clearly the purpose of attendance, that no

improper subject of examination may be tendered to him. The House then gives leave to the Member to attend, if he choose it; waiting first to know from the Member himself whether he chooses to attend, till which they do not take the message into consideration. But when the peers are sitting as a court of criminal judicature, they may order attendance, unless where it be a case of impeachment by the Commons. There it is to be a request. *3 Hats., 17; 9 Grey, 306, 406; 10 Grey, 133.*

The House of Representatives and the Senate have observed this rule; but it does not appear that they have always made public ascertainment of the willingness of the Member to attend (III, 1790, 1791). In one case the Senate laid aside pending business in order to comply with the request of the House (III, 1791). In several instances House committees, after their invitations to Senators to appear and testify had been disregarded, have issued subpoenas. In such cases the Senators have either disregarded the subpoenas, refused to obey them, or have appeared under protest (III, 1792, 1793). In one case, after a Senator had neglected to respond either to an invitation or a subpoena the House requested of the Senate his attendance and the Senate disregarded the request (III, 1794). Where Senators have responded to invitations of House committees, their testimony has been taken without obtaining consent of the Senate (III, 1793, 1795, footnote).

Counsel are to be heard only on private, not on public, bills, and on such points of law only as the House shall direct. *10 Grey, 61.*

§ 841. Admission of counsel.

In 1804 the House admitted the counsel of certain corporations to address the House on pending matters of legislation (V, 7298), and in 1806 voted that a claimant might be heard at the bar (V, 7299); but in 1808, after consideration, the House by a large majority declined to follow again the precedent of 1804 (V, 7300). In early years counsel in election cases were heard at the bar at the discretion of the House (I, 657, 709, 757, 765); but in 1836, after full discussion, the practice was abandoned (I, 660), and, with one exception, in 1841 (I, 659), has not been revived, even for the case of a contestant

who could not speak the English language (I, 661). Counsel appear before committees in election cases, however. Where witnesses and others have been arraigned at the bar of the House for contempt, the House has usually permitted counsel (II, 1601, 1616, 1667), sometimes under conditions (III, 1604, 1696); but in a few cases has declined the request (II, 1608; III, 1666, footnote). In inquiries before committees counsel are usually permitted to appear at the discretion of the committee; but at one time the House required all counsel or agents representing persons or corporations before committees to be registered with the Clerk (III, 1771).

In investigations before committees counsel are admitted usually (III, 1741, 1846, 1847), sometimes even to assist a witness (III, 1772). In examinations preliminary to impeachment counsel are usually admitted (III, 1736, 2470, 2516) unless in cases wherein such proceedings are *ex parte*.

SEC. XIV.—ARRANGEMENT OF BUSINESS.

The Speaker is not precisely bound to any rules as to what bills or other matter shall be first taken up; but it is left to his own discretion, unless the House on a question decide to take up a particular subject. *Hakew., 136.*

§ 342. Advantages
of an order of
business.

A settled order of business is, however, necessary for the government of the presiding person, and to restrain individual Members from calling up favorite measures, or matters under their special patronage, out of their just turn. It is useful also for directing the discretion of the House, when they are moved to take up a particular matter, to the prejudice of others, having priority of right to their attention in the general order of business.

* * * * *

In this way we do not waste our time in debating what shall be taken up. We do one thing at a time;

§ 343.

follow up a subject while it is fresh, and till it is done with; clear the House of business gradatim as it is brought on, and prevent, to a certain degree, its immense accumulation toward the close of the session.

Jefferson gave as a part of his comment on the law of Parliament the order of business in the Senate in his time. Both in the House and Senate the order of business has been changed to meet the needs of the times. The order of business now followed in the House is established by Rule XXIV; and this rule, with the rules supplemental thereto, take away to a very large extent the discretion exercised by the Speaker under the parliamentary law.

In the House of Representatives before committees are appointed it is in order to offer a bill or resolution for consideration not previously considered by a committee. (61st Cong., 1st sess., Record, p. 1284, and 61st Cong., 1st sess., p. 3837.) After committees are appointed bills and resolutions not in order must be referred.—Speaker Clark, April 6, 1911 (62d Cong., 1st sess.).

Arrangement, however, can only take hold of mat-
 ters in possession of the House. New
 matter may be moved at any time
 when no question is before the House.

Such are original motions and reports on bills. Such are bills from the other House, which are received at all times, and receive their first reading as soon as the question then before the House is disposed of; and bills brought in on leave, which are read first whenever presented. So messages from the other House respecting amendments to bills are taken up as soon as the House is clear of a question, unless they require to be printed, for better consideration. Orders of the day may be called for, even when another question is before the House.

In Jefferson's time the principles of this comment would have applied to both House and Senate; but in the House the pressure of business has become so great that the order of business may be interrupted at the will of the majority only by certain specified matters (see annotations following Rule XXIV). For matters not thus specified, interruption of the order takes place only by unanimous consent.

SEC. XV.—ORDER.

* * * *

In Parliament, "instances make order," per Speaker Onslow. *2 Hats.*, 141. But what is done only by one Parliament, cannot be called custom of Parliament, by Prynne. *1 Grey*, 52.

§ 844. Precedent in Parliament and the House.

In the House of Representatives the Clerk is required to note all questions of order and the decisions thereon and print the record thereof as an appendix to the Journal (Rule III, § 3); and the Speaker feels constrained in his rulings to give precedent its proper influence (II, 1317), since the advantages of such a course are undeniable (IV, 4045). But decisions of the Speakers on questions of order are not like judgments of courts which conclude the rights of parties, but may be reexamined and reversed (IV, 4637). It is rare, however, that such a reversal occurs.

SEC. XVI.—ORDER RESPECTING PAPERS.

The Clerk is to let no journals, records, accounts, or papers be taken from the table or out of his custody. *2 Hats.*, 193, 194.

§ 845. Safe keeping of papers and integrity of bills.

Mr. Prynne, having at a Committee of the Whole amended a mistake in a bill without order or knowledge of the committee, was reprimanded. *1 Chand.*, 77.

A bill being missing, the House resolved that a protestation should be made and subscribed by the members "before Almighty God, and this honorable

§§ 346, 347.

House, that neither myself, nor any other to my knowledge, have taken away, or do at this present conceal a bill entitled," &c. *5 Grey, 202.*

After a bill is engrossed, it is put into the Speaker's hands, and he is not to let any one have it to look into. *Town, col. 209.*

In the House of Representatives an alleged improper alteration of a bill was presented as a question of privilege and examined by a select committee. It being ascertained that the alteration was made to correct a clerical error, the committee reported that it was "highly censurable in any Member or officer of the House to make any change, even the most unimportant, in any bill or resolution which has received the sanction of this body" (III, 2598). Engrossed bills do not go into the Speaker's hands. Enrolled bills go to him for signature.

SEC. XVII.—ORDER IN DEBATE.

§ 346. Decorum of Members as to sitting in their places.

When the Speaker is seated in his chair, every member is to sit in his place. *Scob., 6; Grey, 403.*

In the House of Representatives the decorum of Members is regulated by the various sections of Rule XIV; and this provision of the parliamentary law is practically obsolete.

When any Member means to speak, he is to stand up in his place, uncovered, and to address himself, not to the House, or any particular Member, but to the Speaker, who calls him by his name, that the House may take notice who it is that speaks. *Scob., 6; D'Ewes, 487, col. 1; 2 Hats., 77; 4 Grey, 66; 8 Grey, 108.* But Members who are indisposed may be indulged to speak sitting. *2 Hats., 75, 77; 1 Grey, 143.*

§ 347. Procedure of the Member in seeking recognition.

In the House of Representatives the Member, in seeking recognition, is governed by Rule XIV, § 1, which differs materially from this provision

of the parliamentary law. The Speaker, moreover, calls the Member, not by name, but as "the gentleman from ——," naming the State. As long ago as 1832, at least, a Member was not required to rise from his own seat (V, 4979, footnote).

§ 348. Conditions under which a Member's right to the floor is subjected to the will of the House.

When a Member stands up to speak, no question is to be put, but he is to be heard unless the House overrule him. *4 Grey, 390; 5 Grey, 6, 143.*

In the House of Representatives no question is put as to the right of a Member to the floor, unless he be called to order and dealt with by the House under Rule XIV, §§ 4, 5.

If two or more rise to speak nearly together, the Speaker determines who was first up, and calls him by name, whereupon he proceeds, unless he voluntarily sits down and gives way to the other. But sometimes the House does not acquiesce in the Speaker's decision, in which case the question is put, "which Member was first up?" *2 Hats., 76; Scob., 7; D'Ewes, 434, col. 1, 2.*

In the Senate of the United States the President's decision is without appeal.

In the House of Representatives recognitions by the Chair are governed by Rule XIV, § 2, and the practice thereunder. There has been no appeal from the Speaker's decision since 1881 (II, 1425-1428).

No man may speak more than once on the same bill on the same day; or even on another day, if the debate be adjourned. But if it be read more than once in the same day, he may speak once at every reading. *Co., 12, 115; Hakew., 148; Scob., 58; 2*

§ 350. Right of the Member to be heard a second time.

§ 351.

Hats., 75. Even a change of opinion does not give a right to be heard a second time. *Smyth's Comw. L.*, 2, c. 3; *Arcan. Parl.*, 17.

But he may be permitted to speak again to clear a matter of fact, 3 *Grey*, 357, 416; or merely to explain himself, 2 *Hats.*, 73, in some material part of his speech, *Ib.*, 75; or to the manner or words of the question, keeping himself to that only, and not traveling into the merits of it, *Memorials in Hakew.*, 29; or to the orders of the House, if they be transgressed, keeping within that line, and not falling into the matter itself. *Mem. Hakew.*, 30, 31.

The House of Representatives has modified the parliamentary law as to a Member's right to speak a second time by Rule XIV, §§ 3, 6. But in practice the rule is not, ordinarily, enforced rigidly and Members find little difficulty in making explanations such as are contemplated by the parliamentary law.

But if the Speaker rise to speak, the Member standing up ought to sit down, that he may be first heard. *Town.*, col. 205; *Hale Parl.*, 133; *Mem. in Hakew.*, 30, 31. Nevertheless, though the Speaker may of right speak to matters of order, and be first heard, he is restrained from speaking on any other subject, except where the House have occasion for facts within his knowledge; then he may, with their leave, state the matter of fact. 3 *Grey*, 38.

This provision is usually observed in the practice of the House, so far as the conduct of the Speaker in the chair is concerned. In several instances the Speaker has been permitted by the House to make a statement from the chair, as in a case wherein his past conduct had been criticised (II,

§ 351. Participa-
tion of the Speaker
in debate.

1369), and in a case wherein there had been unusual occurrences in the joint meeting to count the electoral vote (II, 1372), and in a matter relating to a contest for the seat of the Speaker as a Member (II, 1360). In rare instances the Speaker has made brief explanations from the chair without asking the assent of the House (II, 1373, 1374). On occasions comparatively rare Speakers have called others to the chair and participated in debate, usually without asking consent of the House (II, 1360, 1367, footnote, 1368, 1371, 1950), and in one case a Speaker on the floor debated a point of order which the Speaker pro tempore was to decide (V, 6097). In rare instances Speakers have left the chair to make motions on the floor (II, 1367, footnote). According to a former custom, now fallen into disuse, Speakers participated freely in debate in Committee of the Whole (II, 1367, footnote).

No one is to speak impertinently or beside the question, superfluous, or tediously.
 § 352. Impertinent, superfluous, or tedious speaking. *Scob.*, 31, 33; *2 Hats.*, 166, 168; *Hale Parl.*, 133.

The House, by Rule XIV, § 1, provides that the Member shall address himself to the question under debate, but neither by rule nor practice has the House ever suppressed superfluous or tedious speaking, its hour rule (XIV, § 2) being a sufficient safeguard in this respect.

No person is to use indecent language against the proceedings of the House; no prior determination of which is to be reflected on by any Member, unless he means to conclude with a motion to rescind it. *2 Hats.*, 169, 170; *Rushw.*, p. 3, v. 1, fol. 42. But while a proposition under consideration is still *in fieri*, though it has even been reported by a committee, reflections on it are no reflections on the House. *9 Grey*, 508.

In the practice of the House of Representatives it has been held out of order in debate to cast reflections on either the House or its membership or its decisions, whether present or past (V, 5132-5138). A Member who had used offensive words against the character of the House, and who declined to explain, was censured (II, 1247). Words impeaching the loyalty

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§§ 354, 355.

of a portion of the membership have also been ruled out (V, 5139). Where a Member reiterated on the floor certain published charges against the House, action was taken, although other business had intervened, the question being considered one of privilege (III, 2637). It is not in order in debate to refer to the proceedings of a committee unless the committee have formally reported their proceedings to the House (V, 5080-5083).

No person, in speaking, is to mention a Member then present by his name, but to describe him by his seat in the House, or who spoke last, or on the other side of the question, &c., *Mem. in Hakew., 3; Smyth's Comw., L. 2, c. 3*; nor to digress from the matter to fall upon the person, *Scob., 31; Hale Parl., 133; 2 Hats., 166*, by speaking reviling, nipping, or unmanly words against a particular Member. *Smyth's Comw., L. 2, c. 3.* * * *

§ 354. Personalities
in debate
forbidden.

In the practice of the House a Member is not permitted to refer to another by name (V, 5144), or to address him in the second person (V, 5140-5143) instead of as "the gentleman from ———," naming the State. By rule of the House (Rule XIV, § 1), as well as by the parliamentary law, personalities are forbidden (V, 4979, 5145, 5163, 5169), whether against the Member in his capacity as Representative or otherwise (V, 5152, 5153). But a distinction has been drawn between charges made by one Member against another in a newspaper and the same made in debate on the floor (III, 2691). Questions have arisen sometimes involving a distinction between general language and personalities (V, 5153, 5163, 5169). A denunciation of the spirit in which a Member had spoken was held out of order as a personality (V, 6981). The House has censured a Member for gross personalities (II, 1251).

Complaint of the conduct of the Speaker should be presented directly for the action of the House and not by way of debate on other matters (V, 5188). In a case wherein a Member used words insulting to the Speaker the House on a subsequent day, and after other business had intervened, censured the offender (II, 1248). In such a case the Speaker would ordinarily leave the chair while action should be taken by the House (II, 1366; V, 5188).

§ 355. Criticism
of the Speaker.

* * * The consequences of a measure may be reprobated in strong terms; but to arraign the motives of those who propose to advocate it is a personality, and against order. *Qui digreditur a materia ad personam*, Mr. Speaker ought to suppress. *Ord. Com., 1604, Apr. 19.*

§ 356. Motives of Members not to be arraigned.

The arraignment of the motives of Members is not permitted (V, 5147-5151), and the Speakers have intervened to prevent it, in the earlier practice preventing even the mildest imputations (V, 5161, 5162). While in debate the assertion of one Member may be declared untrue by another, yet in so doing an intentional misrepresentation must not be implied (V, 5157-5160), and if stated or implied is censurable (II, 1305) and presents a question of privilege (III, 2717). A Member in debate having declared the words of another "a base lie," censure was inflicted by the House on the offender (II, 1249).

No one is to disturb another in his speech by hissing, coughing, spitting, 6 *Grey*, 332; *Scob.*, 8; *D'Ewes*, 332, col. 1, 640, col. 2, speaking or whispering to another, *Scob.* 6; *D'Ewes*, 487, col. 1; not stand up to interrupt him, *Town.*, col. 205; *Mem. in Hakew.*, 31; nor to pass between the Speaker and the speaking Member, nor to go across the House, *Scob.*, 6, or to walk up and down it, or to take books or papers from the table, or write there, 2 *Hats.*, 171.

§ 357. Disorder and interruptions during debate.

The House of Representatives has by Rule XIV, § 7, prescribed certain rules of decorum differing somewhat from this provision of the parliamentary law, but supplemental to it rather than antagonistic. In one respect, however, the practice of the House differs from the apparent intent of the parliamentary law. In the House a Member may interrupt by addressing the Chair for permission of the Member speaking (V, 5006); but it is entirely within the discretion of the Member occupying the floor to determine when and by whom he shall be interrupted (V, 5007, 5008).

§§ 358-360.

Nevertheless, if a Member finds that it is not the inclination of the House to hear him, and that by conversation or any other noise they endeavor to drown his voice, it is his most prudent way to submit to the pleasure of the House, and sit down; for it scarcely ever happens that they are guilty of this piece of ill manners without sufficient reason, or inattention to a Member who says anything worth their hearing. *2 Hats., 77, 78.*

In the House of Representatives, where the previous question and hour rule of debate have been used for many years, the parliamentary method of suppressing a tedious Member has never been imported into the practice (V, 5445).

If repeated calls do not produce order, the Speaker may call by his name any Member obstinately persisting in irregularity; whereupon the House may require the Member to withdraw. He is then to be heard in exculpation, and to withdraw. Then the Speaker states the offense committed; and the House considers the degree of punishment they will inflict. *2 Hats., 167, 7, 8, 172.*

The House of Representatives, in Rule XIV, §§ 4, 5, has made a provision which supercedes this provision of the parliamentary law.

For instances of assaults and affrays in the House of Commons, and the proceedings thereon, see *1 Pet. Misc., 82; 3 Grey, 128; 4 Grey, 328; 5 Grey, 382; 6 Grey, 254; 10 Grey, 8.* Whenever warm words or an

§ 358. Parliamentary method of silencing a tedious Member.

§ 359. The parliamentary law as to naming a disorderly Member.

§ 360. Proceedings in cases of assaults and affrays.

assault have passed between Members, the House, for the protection of their Members, requires them to declare in their places not to prosecute any quarrel, *3 Grey, 128, 293; 5 Grey, 280*; or orders them to attend the Speaker, who is to accommodate their differences, and report to the House, *3 Grey, 419*; and they are put under restraint if they refuse, or until they do. *9 Grey, 234, 312*.

In several instances assaults and affrays have occurred on the floor of the House of Representatives. Sometimes the House has allowed these affairs to pass without notice, the Members concerned making apologies either personally or through other Members (II, 1658-1662). In other cases the House has exacted apologies (II, 1646-1651, 1657), or required the offending Members to pledge themselves before the House to keep the peace (II, 1643). In case of an aggravated assault by one Member on another on the portico of the Capitol for words spoken in debate, the House censured the assailant and three other Members who had been present, armed, to prevent interference (II, 1655, 1656). Assaults or affrays in Committee of the Whole are dealt with by the House (II, 1648-1651).

Disorderly words are not to be noticed till the Member has finished his speech. *5 Grey, 356; 6 Grey, 60*. Then the person objecting to them, and desiring them to be taken down by the Clerk at the table, must repeat them. The Speaker then may direct the Clerk to take them down in his minutes; but if he thinks them not disorderly, he delays the direction. If the call becomes pretty general, he orders the Clerk to take them down, as stated by the objecting Member. They are then a part of his minutes, and when read to the offending Member, he may deny they were his words, and the House must then decide

§ 361. Parliamentary law as to taking down disorderly words.

§ 362.

by a question whether they are his words or not. Then the Member may justify them, or explain the sense in which he used them, or apologize. If the House is satisfied, no further proceeding is necessary. But if two Members still insist to take the sense of the House, the Member must withdraw before that question is stated, and then the sense of the House is to be taken. *2 Hats., 199; 4 Grey, 170; 6 Grey, 59.* When any Member has spoken, or other business intervened, after offensive words spoken, they can not be taken notice of for censure. And this is for the common security of all, and to prevent mistakes which must happen if words are not taken down immediately. Formerly they might be taken down at any time the same day. *2 Hats., 196; Mem. in Hakew., 71; 3 Grey, 48; 9 Grey, 514.*

The House of Representatives has, by Rule XIV, §§ 4, 5, provided a method of procedure in cases of disorderly words. The House permits and requires them to be noticed as soon as uttered, and has not insisted that the offending Member withdraw while the House is deciding as to its course of action.

Disorderly words spoken in a committee must be written down as in the House; but the committee can only report them to the House for animadversion. *6 Grey, 46.*

§ 362. Disorderly words taken down and reported from Committee of the Whole.

This provision of the parliamentary law has been applied to the Committee of the Whole rather than to select or standing committees. The House has censured a Member for disorderly words spoken in Committee of the Whole and reported therefrom (II, 1259).

In Parliament, to speak irreverently or seditiously against the King, is against order.

§ 363. References in debate to the Executive. *Smyth's Comw., L. 2, c. 3; 2 Hats., 170.*

This provision of the parliamentary law is manifestly inapplicable to the House of Representatives (V, 5086); and it has been held in order in debate to refer to the President of the United States or his opinions, either with approval or criticism, provided that such reference be relevant to the subject under discussion and otherwise conformable to the rules of the House (V, 5087-5091). Also a reference to the probable action of the President was held in order (V, 5092). In debating a proposition to impeach the President a wide latitude was permitted to a Member in preferring charges (V, 5093), but he was required to abstain from language personally offensive (V, 5094). On January 27, 1909, the House struck from the Congressional Record remarks which went beyond the limits of proper criticism of executive action.

It is a breach of order in debate to notice what has been said on the same subject in the other House, or the particular votes or majorities on it there; because the opinion of each House should be left to its own independency, not to be influenced by the proceedings of the other; and the quoting them might beget reflections leading to a misunderstanding between the two Houses. *8 Grey, 22.*

§ 364. Debate and proceedings in the other House not to be noticed in debate.

This rule of the parliamentary law is in use in the House of Representatives to the full extent of its provisions, and it has always been held a breach of order to refer to debates or votes on the same subject in the other House (V, 5095-5097), or to the action or probable action of the other House (V, 5101-5105), or to its methods of procedure, as bearing on the course to be taken on a pending matter (V, 5100). In one instance the Senate declined to have read from the Congressional Record the proceedings of the

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House, even as the basis of a question of order relating to the rights of the Senate (V, 6406). It is, however, permissible to refer to proceedings in the other House generally, provided the reference does not contravene the principles of the rule (V, 5098, 5099, 5107-5111); but a Member may not, in debate, in the House, read the record of speeches and votes of Senators in such connection of comment or criticism as might be expected to lead to recriminations (V, 5107-5111), and it was even held out of order to criticise words spoken in the Senate by one not a Member of that body in the course of an impeachment trial (V, 5106). But a Member of the House was permitted to read, in debate, a speech made in the Senate by one no longer a member of that body (V, 5113), and in another case the personal views of a Senator, not uttered in the Senate, were referred to in the House (V, 5112).

While the Senate may be referred to properly in debate, it is not in order to discuss its functions or criticise its acts (V, 5114-5120), or refer to a Senator in terms of personal criticism (V, 5121, 5122), or read a paper making such criticism (V, 5128); and after examination by a committee a speech reflecting on the character of the Senate was ordered to be stricken from the Record, on the ground that it tended to create "unfriendly conditions between the two bodies * * * obstructive of wise legislation and little short of a public calamity" (V, 5129). But where a Member has been assailed in the Senate, he has been permitted to explain his own conduct and motives, without bringing the whole controversy into discussion or assailing the Senator (V, 5123-5126). Propositions relating to breaches of these principles have been entertained as of privilege (V, 5129, 6980).

Neither House can exercise any authority over a Member or officer of the other, but should complain to the House of which he is, and leave the punishment to them.

§ 366. Complaint by one House of conduct of a Member of the other.

In a notable instance, wherein a Member of the House had assaulted a Senator in the Senate Chamber for words spoken in debate, the Senate examined the breach of privilege and transmitted its report to the House, which punished the Member (II, 1622). But where certain Members of the House, in a published letter, sought to influence the vote of a Senator in an impeachment trial, the House declined to consider the matter as a breach of privilege (III, 2657).

* * * Where the complaint is of words disrespectfully spoken by a Member of another House, it is difficult to obtain punishment, because of the rules supposed necessary to be observed (as to the immediate noting down of words) for the security of Members. Therefore it is the duty of the House, and more particularly of the Speaker, to interfere immediately, and not to permit expressions to go unnoticed which may give a ground of complaint to the other House, and introduce proceedings and mutual accusations between the two Houses, which can hardly be terminated without difficulty and disorder. *3 Hats., 51.*

In the House of Representatives this rule of the parliamentary law is considered as binding on the Chair (V, 5130).

No Member may be present when a bill or any business concerning himself is debating; nor is any Member to speak to the merits of it till he withdraws. *2 Hats., 219.*

§ 368. Course of the Member when business concerning himself is debating. The rule is that if a charge against a Member arise out of a report of a committee, or examination of witnesses in the House, as the Member knows from that to what points he is to direct his exculpation, he may be heard to those points before any question is moved or stated against him. He is then to be heard, and withdraw before any question is moved. But if the question itself is the charge, as for breach of order or matter arising in the debate, then the charge must be stated (that is, the question must

§§ 369, 370.

be moved), himself heard, and then to withdraw. *2 Hats., 121, 122.*

In 1832, during proceedings for the censure of a Member, the Speaker informed the Member that he should retire (II, 1366); but this seems to be an exceptional instance of the enforcement of the law of Parliament. In other cases, after the proposition for censure or expulsion has been proposed, Members have been heard in debate, either as a matter of right (II, 1286), as a matter of course (II, 1246, 1253), by express provision (II, 1273), and in writing (II, 1273), or by unanimous consent (II, 1275). But a Member was not permitted to depute another Member to speak in his behalf (II, 1273).

Where the private interests of a Member are concerned in a bill or question he is to withdraw. And where such an interest has appeared, his voice has been disallowed, even after a division. In a case so contrary, not only to the laws of decency, but to the fundamental principle of the social compact, which denies to any man to be a judge in his own cause, it is for the honor of the House that this rule of immemorial observance should be strictly adhered to. *2 Hats., 119, 121; 6 Grey, 368.*

In the House of Representatives it has not been usual for the Member to withdraw when his private interests are concerned in a pending measure; but the House has provided by rule (Rule VIII, § 1) that the Member shall not vote in such a contingency. In one instance the Senate disallowed a vote given by a Senator on a question relating to his own right to a seat; but the House has never had occasion to proceed so far (V, 5959).

No Member is to come into the House with his head covered, nor to remove from one place to another with his hat on, nor is to put on his hat in coming in or removing, until he be set down in his place. *Scob., 6.*

§ 370. Wearing of hats by Members.

Until 1837 the parliamentary practice of wearing hats during the session continued in the House; but in that year it was abolished by rule (Rule XIV, § 7).

§ 371. Adjournment
of questions of
order.

A question of order may be adjourned
to give time to look into precedents. 2
Hats., 118.

The Speaker once declined, on a difficult question of order, to rule until he had taken time for examination (III, 2725); but it is conceivable that a case might arise wherein this privilege of the Chair would require approval of the majority of the House, to prevent arbitrary obstruction of the pending business by the Chair. The law of Parliament evidently contemplates that the adjournment of a question of order shall be controlled by the House.

§ 372. House's
control over deci-
sions of the
Speaker.

In Parliament, all decisions of the
Speaker may be controlled by the
House. 3 *Grey, 319.*

The House of Representatives provides for controlling decisions of the Speaker by appeal (Rule I, § 4).

SEC. XVIII.—ORDERS OF THE HOUSE.

§ 373. Keeping of
the doors of the
House.

Of right, the door of the House ought not to be
shut, but to be kept by porters, or
Sergeants-at-Arms, assigned for that
purpose. *Mod ten. Parl., 23.*

The doors of the House of Representatives are kept by the Doorkeeper and his assistants (Rule V, § 1).

§ 374. Right of the
Member to demand
execution of the
subsisting order.

The only case where a Member has a right to insist
on anything, is where he calls for the
execution of a subsisting order of the
House. Here there having been already
a resolution, any person has a right to insist that the
Speaker, or any other whose duty it is, shall carry it
into execution; and no debate or delay can be had on

§§ 375-377.

it. Thus any Member has a right to have the House or gallery cleared of strangers, an order existing for that purpose; or to have the House told when there is not a quorum present. 2 *Hats.*, 87, 129. How far an order of the House is binding, see *Hakew.*, 392.

Any Member has a right at any time to demand the execution of a rule or order of the House of Representatives, including the rule prescribing the daily order of business (IV, 3058). He does this by calling for the "regular order." He may not, however, demand that the galleries be cleared, as the House, in which this power resides (II, 1353), has by rule extended the power to the Speaker (Rule I, § 2) and the chairman of the Committee of the Whole (Rule XXIII, § 1), but not to the individual Member.

But where an order is made that any particular matter be taken up on a particular day, there a question is to be put, when it is called for, whether the House will now proceed to that matter? Where orders of the day are on an important or interesting matter, they ought not to be proceeded on till an hour at which the House is usually full [which in Senate is at noon].

The rule of the House of Representatives providing for raising the question of consideration (Rule XVI, § 3) has, in connection with the practice as to special orders, superceded this provision of the parliamentary law. The House always proceeds with business at its hour of meeting, unless prevented by a point that no quorum is present (IV, 2732).

Orders of the day may be discharged at any time, and a new one made for a different day. § 377. Orders of the day now obsolete. 3 *Grey*, 48, 313.

The House of Representatives found the use of "Orders of the day" as a method of disposing business impracticable as long ago as 1818, and not long after abandoned their use (IV, 3057), although an interesting reference to them survives in Rule XXIV, § 1. The House sometimes uses "Special orders," but its business proceeds regularly by Rule XXIV.

When a session is drawing to a close and the important bills are all brought in, the House, in order to prevent interruption by further unimportant bills, sometimes comes to a resolution that no new bill be brought in, except it be sent from the other House. 3 Grey, 156.

This provision is obsolete so far as the practice of the House of Representatives is concerned, as business goes on uninterruptedly until the Congress expires (Rule XXVI).

All orders of the House determine with the session; and one taken under such an order may, after the session is ended, be discharged on a habeas corpus. *Raym.*, 120; *Jacob's L. D. by Ruffhead; Parliament*, 1 Lev., 165, *Pitchara's case*.

§ 379. Effect of end of the session on existing orders, especially as to imprisonment.

The House of Representatives, by Rule XXVII and the practice thereunder, has modified the rule of Parliament as to business pending at the end of a session which is not at the same time the end of a Congress. A standing order, like that providing for the hour of daily meeting of the House, expires with a session (I, 104-109); but the House uses few standing orders. In 1866 the House discussed its power to imprison for a period longer than the duration of the existing session (II, 1629), and in 1870, for assaulting a Member returning to the House from absence on leave, Patrick Woods was committed for a term extending beyond the adjournment of the session, but not beyond the term of the existing House (II, 1628).

Where the Constitution authorizes each House to determine the rules of its proceedings, it must mean in those cases (legislative, executive, or judiciary) submitted to them by the Constitution, or in something relating to these, and necessary toward their execution. But

§ 380. Jefferson's views as to the constitutional power to make rules.

§ 881.

orders and resolutions are sometimes entered in the journals having no relation to these, such as acceptances of invitations to attend orations, to take part in procession, etc. These must be understood to be merely conventional among those who are willing to participate in the ceremony, and are therefore, perhaps, improperly placed among the records of the House.

The House of Representatives has frequently examined its constitutional power to make rules, and this power has also been discussed by the Supreme Court (V, 6755). It has been settled that Congress may not by law interfere with the constitutional right of a future House to make its own rules (I, 82; V, 6765, 6766), or to determine for itself the order of proceedings in effecting its organization (I, 242-245; V, 6765, 6766). It has also been determined, after long discussion and trial by practice, that one House may not continue its rules in force to and over its successor (I, 187, 210; V, 6002, 6743-6747). A law passed by the existing Congress has been recognized as of binding force in matters of procedure (II, 1341; V, 6767, 6768); but when a law passed by a preceding Congress has assumed to lay down a rule of procedure the House has inclined to doubt the validity of the law (V, 6765, 6766), and in one case the Chair has denied the authority of a law of this nature which was in conflict with a rule of the House (IV, 3579). The theories involved in this question have been most carefully examined and decisively determined in reference to the law of 1851, which directs the method of procedure for the House in its constitutional function of judging the elections of its Members; and it has been determined that this law is not of absolute binding force on the House, but rather a wholesome rule not to be departed from except for cause (I, 597, 713, 726, 833; II, 1122).

As to the participation on occasions of ceremony, the House has entered its orders on its journal; but it rarely attends outside the Capitol building as a body, usually preferring that its Members go individually (V, 7061-7064) or that it be represented by a committee (V, 7053-7056). It has discussed, but not settled, its power to compel a Member to accompany it without the Hall on an occasion of combined business and ceremony (II, 1139).

SEC. XIX.—PETITION.

§ 382. Petitions,
remonstrances,
and memorials.

A petition prays something. A remonstrance has no prayer. *1 Grey, 58.*

The rules of the House of Representatives make no mention of remonstrances, but do mention petitions and memorials (Rule XXII, § 1). Resolutions of state legislatures and of primary assemblies of the people are received as memorials (IV, 3326, 3327), but papers general or descriptive in form may not be presented as memorials (IV, 3325).

Petitions must be subscribed by the petitioners, *Scob., 87; L. Parl., c. 22; 9 Grey, 362,* unless they are attending, *1 Grey, 401,* or unable to sign, and averred by a member, *3 Grey, 418.* But a petition not subscribed, but which the member presenting it affirmed to be all in the handwriting of the petitioner, and his name written in the beginning, was on the question (March 14, 1800) received by the Senate. The averment of a member, or of somebody without doors, that they know the handwriting of the petitioners, is necessary, if it be questioned. *6 Grey, 36.* It must be presented by a member, not by the petitioners, and must be opened by him holding it in his hand. *10 Grey, 57.*

In the House of Representatives petitions have been presented for many years by filing with the Clerk (Rule XXII, § 1). Members file them, and petitioners do not attend on the House in the sense implied in the parliamentary law. In cases where a petition set forth serious charges, the petitioner was required to have his signature attested by a notary (III, 2030, footnote).

§§ 384, 385.

Regularly a motion for receiving it must be made and seconded, and a question put, whether it shall be received? but a cry from the House of "received," or even silence, dispenses with the formality of this question. It is then to be read at the table and disposed of.

Prior to the adoption of the provisions of Rule XXII, § 1, petitions were presented from the floor by Members, and questions frequently arose as to the reception thereof (IV, 3350-3356). But under the present practice such procedure does not occur.

SEC. XX.—MOTIONS.

When a motion has been made, it is not to be put to the question or debated until it is seconded. *Scob.*, 21.

It is then, and not till then, in possession of the House, and can not be withdrawn but by leave of the House. It is to be put into writing, if the House or Speaker require it, and must be read to the House by the Speaker as often as any Member desires it for his information. *2 Hats.*, 82.

The rules of the House of Representatives (Rule XVI, §1) have long since dispensed with the requirement of a second for ordinary motions (V, 5304). Rule XVI, §2, provides further that a motion may be withdrawn "before decision or amendment;" and §1 of the same rule provides that the motion shall be reduced to writing "on the demand of any Member." In the practice of the House, when a paper on which the House is to vote has been read once, the reading may not be required again unless the House shall order it read (V, 5260); but it does not appear that this modifies the provision of the parliamentary law that mere motions, not in the nature of amendments or documents, shall be read as often as is desired for information.

It might be asked whether a motion for adjournment or for the orders of the day can be made by one Member while another is speaking? It can not. When two Members offer to speak, he who rose first is to be heard, and it is a breach of order in another to interrupt him, unless by calling him to order if he departs from it. And the question of order being decided, he is still to be heard through. A call for adjournment, or for the order of the day, or for the question, by gentlemen from their seats, is not a motion. No motion can be made without rising and addressing the Chair. Such calls are themselves breaches of order, which, though the Member who has risen may respect, as an expression of impatience of the House against further debate, yet, if he chooses, he has a right to go on.

§ 386. Interruptions of the Member having the floor.

§ 387. Members required to rise to make motions, call for the order of business, etc.

The practice of the House of Representatives has modified the principle that the Member who rises first is to be recognized (Rule XIV, § 2); but in other respects the principles of this paragraph of the parliamentary law are in force.

When the House commands, it is by an "order."

§ 388. Orders and resolutions of the House.

But fact, principles, and their own opinions and purposes, are expressed in the form of resolutions.

A resolution for an allowance of money to the clerks being moved, it was objected to as not in order, and so ruled by the Chair; but on appeal to

§§ 389, 390.

the Senate (*i. e.*, a call for their sense by the President, on account of doubt in his mind, according to Rule XX, clause 2) the decision was overruled. *Jour., Senate, June 1, 1796.* I presume the doubt was, whether an allowance of money could be made otherwise than by bill.

In the modern practice concurrent resolutions have been developed as a means of expressing fact, principles, opinions, and purposes of the two Houses (II, 1566, 1567). Joint committees are authorized by resolutions of this form (III, 1998, 1999). A concurrent resolution is binding on neither House until agreed to by both (IV, 3379). It is not sent to the President for approval unless it contain a proposition of legislation, which is not within the scope of the modern form of concurrent resolution (IV, 3484).

Another development of the modern practice is the joint resolution, which is a bill so far as the processes of the Congress in relation to it are concerned (IV, 3375). With the exception of joint resolutions proposing amendments to the Constitution (V, 7029), all these resolutions are sent to the President for approval and have the full force of law. They are used for what may be called the incidental, unusual, or inferior purposes of legislating (IV, 3372), as extending the national thanks to individuals (IV, 3370), the invitation to La Fayette to visit America (V, 7082, footnote), the welcome to Kossuth (V, 7083), notice to a foreign government of the abrogation of a treaty (V, 6270), declaration of intervention in Cuba (V, 6321), correction of an error in an existing act of legislation (IV, 3519), election of managers for National Soldiers' Homes (V, 7336), special appropriations for minor and incidental purposes (V, 7319). At one time they were used for purposes of general legislation; but the two Houses finally concluded that a bill was the proper instrumentality for this purpose (IV, 3370-3373). A joint resolution may be changed to a bill by amendment (IV, 3374)

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SEC. XXIII.—BILLS, LEAVE TO BRING IN.

When a Member desires to bring in a bill on any subject, he states to the House in general terms the causes for doing it, and concludes by moving for leave to bring in a bill, entitled, &c. Leave being given, on the question, a committee is appointed to prepare and bring in the bill. The mover and seconder are always appointed of this committee, and one or more in addition. *Hakew.*, 132; *Scob.*, 40. It is to be presented fairly written, without any erasure or interlineation, or the Speaker may refuse it. *Scob.*, 41; 1 *Grey*, 82, 84.

§ 391. Obsolete provisions as to introduction of bills.

This provision is obsolete, Rule XXII, §§ 1-3, providing an entirely different method of introducing bills. The introduction of bills by leave was gradually dropped by the practice of the House, and after 1850 the present free system of permitting Members to introduce at will bills for printing and reference began to develop (IV, 3365).

SEC. XXIV.—BILLS, FIRST READING.

When a bill is first presented, the Clerk reads it at the table, and hands it to the Speaker, who, rising, states to the House the title of the bill; that this is the first time of reading it; and the question will be, whether it shall be read a second time? then sitting down to give an opening for objections. If none be made, he rises again, and puts the question, whether it shall be read a second time? *Hakew.*, 137, 141. A

§ 392. Obsolete requirements as to first reading of bills.

§ 393.

bill cannot be amended on the first reading, *6 Grey, 286*; nor is it usual for it to be opposed then, but it may be done, and rejected. *D'Ewes, 335, col. 1; 3 Hats., 198.*

This provision is obsolete, the practice under Rule XXI, § 1, now governing the procedure of the House of Representatives.

SEC. XXV.—BILLS, SECOND READING.

The second reading must regularly be on another day. *Hakew., 143.* It is done by the Clerk at the table, who then hands it to the Speaker. The Speaker, rising, states to the House the title of the bill; that this is the second time of reading it; and that the question will be, whether it shall be committed, or engrossed and read a third time? But if the bill came from the other House, as it always comes engrossed, he states that the question will be, whether it shall be read a third time? and before he has so reported the state of the bill, no one is to speak to it. *Hakew., 143, 146.*

In the Senate of the United States, the President reports the title of the bill; that this is the second time of reading it; that it is now to be considered as in a Committee of the Whole; and the question will be, whether it shall be read a third time? or that it may be referred to a special committee?

The provisions of this paragraph are to a large extent obsolete so far as the House of Representatives is concerned, the practice under Rule XXI, § 1, now governing.

SEC. XXVI.—BILLS, COMMITMENT.

If on motion and question it be decided that the bill shall be committed, it may then be moved to be referred to Committee of the Whole House, or to a special committee. If the latter, the Speaker proceeds to name the committee. Any member also may name a single person, and Clerk is to write him down as of the committee. But the House have a controlling power over the names and number, if a question be moved against any one; and may in any case put in and put out whom they please.

§ 394. Parliamentary law (largely obsolete) as to reference of bills to committees.

This paragraph is to a large extent obsolete under the rules and practice of the House of Representatives. Bills are referred in the first instance by the Speaker to standing committees as prescribed by the rules (Rules XI, XXII, §§ 1, 2), and references to the Committee of the Whole are also made in the first instance under direction of the Speaker (Rule XIII, § 2). Reference of a matter under consideration is made by a motion to refer which specifies the committee and may provide for a select committee of a specified number of persons (IV, 4402). But such committee is appointed only by the Speaker (Rule X, § 2).

House of Representatives Rule XVII provides that the Speaker may entertain a motion to commit with or without instructions to a standing committee.

Those who take exceptions to some particulars in the bill are to be of the committee, but none who speak directly against the body of the bill; for he that would totally destroy will not amend it, *Hakew.*, 146; *Town.*, col., 208; *D'Ewes*, 634, col. 2; *Scob.*, 47; or as is said, 5 *Grey*, 145, the child is not to be put to a nurse that cares not for it, 6 *Grey*, 373. It is there-

§ 395. Obsolete provisions as to constitution of committees.

§§ 396-398.

fore a constant rule "that no man is to be employed in any matter who has declared himself against it." And when any member who is against the bill hears himself named of its committee he ought to ask to be excused. Thus, March 7, 1806, Mr. Hadley was, on the question being put, excused from being of a committee, declaring himself to be against the matter itself. *Scob.*, 46.

This provision is entirely inapplicable in the House of Representatives, where the standing committees with majority and minority representation (IV, 4467, 4477, footnote, 4478) consider most of the bills. And in the infrequent occasions when a select committee is appointed the minority party is always represented in the membership.

The Clerk may deliver the bill to any member of the committee, *Town.*, col. 138; but it is usual to deliver it to him who is first named.

§ 396. Delivery of bills to committees.

Where committees have clerks and rooms, the bills are delivered to the clerk in the room.

In some cases the House has ordered a committee to withdraw immediately into the committee chamber and act on and bring back the bill, sitting the House. *Scob.*, 48. * * *

§ 397. Obsolete provision for ordering a committee to withdraw and bring back a bill.

This procedure is never followed in the House of Representatives, as the order of business leaves no place for such an order, except it be offered by unanimous consent.

When a bill is under consideration, however, the House may on motion commit it with instructions to report "forthwith" with certain specified amendment (V, 5548, 5549), in which case the chairman of the committee reports at once without awaiting action of the committee (V, 5545-5547) and the bill is in order for immediate consideration (V, 5550).

§ 398. Committal with directions to report forthwith.

Except as provided in Rule XXVII, § 4, the motion to discharge a committee from the consideration of an ordinary legislative proposition is not privileged under the rules (IV, 3533, 4693), but where a matter involves a question of privilege (III, 2585, 2709) or is privileged under the rule relating to resolutions of inquiry (Rule XXII, § 5; III, 1871; IV, 4695) the motion to discharge is admitted. The motion is not debatable (III, 1868; IV, 4695) and may be laid on the table (V, 5407), but the question of consideration may not be demanded against it (V, 4977).

* * *. A committee meet when and where they please, if the House has not ordered time and place for them, *6 Grey, 370*; but they can only act when together, and not by separate consultation and consent—nothing being the report of the committee but what has been agreed to in committee actually assembled.

§ 400. Meetings and action of committees.

In the House of Representatives the standing committees usually meet in their committee rooms, but there is no rule requiring them to meet there.

The House has adhered to the principle that a report must be authorized by a committee acting together, and a paper signed by a majority of the committee acting separately was ruled out (IV, 4584). A report is sometimes authorized by less than a majority of the whole committee, some members being silent or absent (II, 985, 986).

§ 401. Authorization of reports of committees.

In a rare instance a majority of a committee agreed to a report, but disagreed on the facts necessary to sustain the report (I, 819). It is not uncommon for a committee to find itself unable to agree to a positive recommendation, being equally divided, in which case it may report the fact to the House (I, 347; IV, 4665, 4666), sometimes with evidence and majority and minority views (III, 2403), with minority views alone (II, 945), or with propositions representing the opposing contentions (III, 2497; IV, 4664). It is not essential that the report of a committee be signed (II, 1274), but the minority views are signed by those concurring in them (IV, 4671). In case where a majority of a committee signed a report it was held valid, although a necessary one of that majority did not concur in all the statements (IV, 4587). If a report is actually sustained by the majority of a committee, it is not impeached by the fact that a less number sign it (II, 1091), or by the fact that later by the action of absentees more than a majority of the whole committee are

JEFFERSON'S MANUAL.

§§ 402-404.

found to have signed minority views (IV, 4585). Objection being made that a report had not been authorized by a committee and there being doubt as to the validity of the authorization, the question as to the reception of the report is submitted to the House (IV, 4588-4591). But where the Speaker is satisfied of the correctness of the authorization (IV, 4592, 4593) of a report he may decide that it shall be received. And in case wherein it was shown that a majority of a committee had met and authorized a report he did not heed the fact that the meeting was not regularly called (IV, 4594). A bill improperly reported is not entitled to its place on the calendar (IV, 3117); but the validity of a report may not be questioned after the House has voted to consider it (IV, 4598) or after actual consideration has begun (IV, 4599).

§ 402. The quorum of a select or standing committee.

A majority of the committee constitutes a quorum for business. *Elsynge's Method of Passing Bills, 11.*

A quorum of a committee may transact business and a majority of the quorum, even though it be a minority of the whole committee, may authorize a report (IV, 4586). The validity of testimony taken before less than a quorum of a committee has been doubted (III, 1774); but the House may authorize less than a quorum to act (IV, 4553, 4554).

Any Member of the House may be present at any select committee, but can not vote, and must give place to all of the committee, and sit below them. *Elsynge, 12; Scob., 49.*

§ 403. Presence of a Member of the House in a select committee.

It does not appear that the relations of this provision to the principle that a committee may conduct its proceedings in secret (IV, 4557-4564) has been determined in the House of Representatives.

The committee have full power over the bill or other paper committed to them, except that they can not change the title or subject. *8 Grey, 228.*

§ 404. Power of committees over the body and title of a bill.

In the House of Representatives committees may recommend amendments to the body of a bill or to the title but may not otherwise change the text.

§ 405. Parliamentary law governing consideration of bills, etc., in committees.

The paper before a committee, whether select or of the whole, may be a bill, resolutions, draught of an address, &c., and it may either originate with them or be referred to them. In every case the whole paper is read first by the Clerk, and then by the chairman, by paragraphs, *Scob.*, 49, pausing at the end of each paragraph, and putting questions for amending, if proposed. In the case of resolutions or distinct subjects, originating with themselves, a question is put on each separately, as amended or unamended, and no final question on the whole, *3 Hats.*, 276; but if they relate to the same subject, a question is put on the whole. If it be a bill, draught of an address, or other paper originating with them, they proceed by paragraphs, putting questions for amending, either by insertion or striking out, if proposed; but no question on agreeing to the paragraphs separately; this is reserved to the close, when a question is put on the whole, for agreeing to it as amended or unamended. But if it be a paper referred to them, they proceed to put questions of amendment, if proposed, but no final question on the whole; because all parts of the paper, having been adopted by the House, stand, of course, unless altered or struck out by a vote. Even if they are opposed to the whole paper, and think it can not be made good by amendments, they can not reject it, but must report it back to the House without amendments, and there make their oppositon.

§§ 406, 407.

In the House of Representatives it has generally been held that a select or standing committee may not report a bill whereof the subject-matter has not been referred to them (IV, 4355-4360). In the older practice the Committee of the Whole originated resolutions and bills (IV, 4705); but the later development of the rules governing the order of business would prevent the offering of a motion to go into Committee of the Whole for such a purpose, except by unanimous consent.

The natural order in considering and amending any paper is, to begin at the beginning, and proceed through it by paragraphs; and this order is so strictly adhered to in Parliament, that when a latter part has been amended, you can not recur back and make any alteration in a former part. *2 Hats., 90.* In numerous assemblies this restraint is doubtless important. But in the Senate of the United States, though in the main we consider and amend the paragraphs in their natural order, yet recurrences are indulged; and they seem, on the whole, in that small body, to produce advantages outweighing their inconveniences.

In the House of Representatives amendments to paragraphs or sections are made in Committee of the Whole under Rule XXIII, § 5. In the House itself amendments to House bills are made pending the engrossment and third reading (IV, 3392; V, 5781) and to Senate bills before the third reading (IV, 3393). Amendments are offered to any part of the bill, without proceeding consecutively with the several paragraphs or sections (IV, 3392). In Committee of the Whole the procedure is different.

To this natural order of beginning at the beginning, there is a single exception found in parliamentary usage. When a bill is taken up in committee, or on its second reading, they postpone the preamble till the other parts of the bill are gone through. The reason is,

§ 406. Order of
amending bills
in the House.

§ 407. Preamble
amended after
the body of the
bill has been
considered.

that on consideration of the body of the bill such alterations may therein be made as may also occasion the alteration of the preamble. *Scob.*, 50; 7 *Grey*, 431.

On this head the following case occurred in the Senate, March 6, 1800: A resolution which had no preamble having been already amended by the House so that a few words only of the original remained in it, a motion was made to prefix a preamble, which having an aspect very different from the resolution, the mover intimated that he should afterwards propose a correspondent amendment in the body of the resolution. It was objected that a preamble could not be taken up till the body of the resolution is done with; but the preamble was received, because we are in fact through the body of the resolution; we have amended that as far as amendments have been offered, and, indeed, till little of the original is left. It is the proper time, therefore, to consider a preamble; and whether the one offered be consistent with the resolution is for the House to determine. The mover, indeed, has intimated that he shall offer a subsequent proposition for the body of the resolution; but the House is not in possession of it; it remains in his breast, and may be withheld. The rules of the House can only operate on what is before them. The practice of the Senate, too, allows recurrences backward and forward for the purpose of amendment, not permitting amendments in a subsequent to preclude those in a prior part, or *e converso*.

§§ 408-410.

In the practice of the House of Representatives the preamble of a bill or joint resolution is agreed to most conveniently after the engrossment and before the third reading (IV, 3414; V, 5469, 5470). On the passage of a bill or joint resolution a separate vote may not be demanded on the preamble (V, 6147, 6148); but where a simple resolution of the House has a preamble, the preamble may be laid on the table without affecting the status of the accompanying resolution (V, 5430).

When the committee is through the whole, a Member moves that the committee may rise, and the chairman report the paper to the House, with or without amendments, as the case may be. *2 Hats., 289, 292; Scob., 53; 2 Hats., 290; 8 Scob., 50.*

§ 408. Directions of a committee for making of its report.

In the House of Representatives a committee may order its report to be made by the chairman (IV, 4669) or by any other member of the committee (IV, 4526), even though he be a member of the minority party (IV, 4672, 4673). Only the chairman makes report for the Committee of the Whole (V, 6987).

When a vote is once passed in a committee, it can not be altered but by the House, their votes being binding on themselves. *1607, June 4.*

§ 409. As to reconsideration of a vote in committee.

This provision of the parliamentary law has been held to prevent the use of the motion to reconsider in Committee of the Whole (IV, 4716-4718), and the practice seems to have inclined against the use of the motion in a standing or select committee (IV, 4596, 4571), but there is a precedent which authorizes the use of the motion (IV, 4570).

The committee may not erase, interline, or blot the bill itself; but must, in a paper by itself set down the amendments, stating the words which are to be inserted or omitted, *Scob., 50*, and where, by references to page, line, and word of the bill. *Scob., 50.*

§ 410. Method of noting amendments to a bill in committee.

SEC. XXVII.—REPORT OF COMMITTEE.

§ 411. Parliamentary method of submitting reports.

The chairman of the committee, standing in his place, informs the House that the committee to whom was referred such a bill, have, according to order, had the same under consideration, and have directed him to report the same without any amendment, or with sundry amendments (as the case may be), which he is ready to do when the House pleases to receive it. And he or any other may move that it be now received; but the cry of "now, now," from the House, generally dispenses with the formality of a motion and question. He then reads the amendments, with the coherence in the bill, and opens the alterations and the reasons of the committee for such amendments, until he has gone through the whole. He then delivers it at the Clerk's table, where the amendments reported are read by the Clerk without the coherence; whereupon the papers lie upon the table till the House, at its convenience, shall take up the report. *Scob.*, 52; *Hakew.*, 148.

This provision is to a large extent obsolete so far as the practice of the House of Representatives is concerned. Most of the reports of committees are made by filing them with the Clerk without reading (Rule XIII, § 2), and only the reports of committees having leave to report at any time are made by the chairman or other member of the committee from the floor (Rule XI, § 61). While the privileged reports are frequently acted on when presented, yet the general rule (Rule XIII, § 1) is that reports shall be placed on the calendars of the House, there to await action under the rules for the order of business (Rule XXIV).

§ 412-413.

The report being made, the committee is dissolved, and can act no more without a new power. *Scob.*, 51. But it may be revived by a vote, and the same matter recommitted to them. 4 *Grey*, 361.

§ 412. Reports; dissolution, and revival of select committees.

This provision does not apply to the Committees of the Whole as they exist in the House of Representatives at the present time or to the standing committees. It does apply to select committees, which expire when they report finally, but may be revived by the action of the House in referring in open House a new matter (IV, 4404, 4405). A select committee expires at the end of a session (IV, 4394-4399), and this limitation applies also to joint select committees (IV, 4420).

SEC. XXVIII.—BILL, RECOMMITMENT.

After a bill has been committed and reported, it ought not, in an ordinary course, to be recommitted; but in cases of importance, and for special reasons, it is sometimes recommitted, and usually to the same committee. *Hakew.*, 151. If a report be recommitted before agreed to in the House, what has passed in committee is of no validity; the whole question is again before the committee, and a new resolution must be again moved, as if nothing had passed. 3 *Hats.*, 131—note.

§ 413. Recommitment of a bill to a committee.

In Senate, January, 1800, the salvage bill was recommitted three times after the commitment.

Where a matter is recommitted with instructions the committee must confine itself within the instructions (IV, 4404), and if the instructions relate to a certain portion only of a bill, other portions may not be reviewed (V, 5526). When a report has been disposed of adversely a motion to recommit it is not in order (V, 5559). Bills are sometimes recommitted to the

Committee of the Whole as the indirect result of the action of the House (Rule XXIII, § 7; IV, 4784) or directly on motion either with or without instructions (V, 5552, 5553).

A particular clause of a bill may be committed without the whole bill, *3 Hats., 131*; or so much of a paper to one and so much to another committee.

§ 414. Division of matters for reference to committees.

In the usage of the House before the rules provided that petitions should be filed with the Clerk instead of being referred from the floor, it was the practice to refer a portion of a petition to one committee and the remainder to another when the subject matter called for such division (IV, 3359). Communications, such as the report of the managers of the Soldiers' Home, are sometimes divided for reference. But a bill or a joint resolution (IV, 4376) may not be divided, although it may contain matters properly within the jurisdiction of several committees (IV, 4372).

SEC. XXIX.—BILL, REPORTS TAKEN UP.

When the report of a paper originating with a committee is taken up by the House, they proceed exactly as in committee. Here, as in committee, when the paragraphs have, on distinct questions, been agreed to *seriatim*, *5 Grey, 366*; *6 Grey, 368*; *8 Grey, 47, 104, 360*; *1 Torbuck's Deb., 125*; *3 Hats., 348*, no question needs be put on the whole report. *5 Grey, 381*.

§ 415. Consideration and action on reports.

In the House of Representatives committees usually report bills, joint resolutions, concurrent resolutions, or simple resolutions. These come before the House for action while the written reports accompanying them, which are always printed, do not (IV, 4674), and even the reading of the reports is in order only in the time of debate (V, 5292). In rare instances, however, committees submit merely written reports without propositions for action. Such reports being before the House may be debated before any specific motion has been made (V, 4987, 4988), and are in such case read to the House (IV, 4663) and after being considered the question is taken on

§ 416.

agreeing. In such cases the report appears in full on the Journal (II, 1364; IV, 4675; V, 7177). When reports are acted on in this way it has not been the practice of the House to consider them by paragraphs, but the question has been put on the whole report (II, 1364).

On taking up a bill reported with amendments the amendments only are read by the Clerk. § 416. Action by the House on amendments recommended by committees. The Speaker then reads the first, and puts it to the question, and so on till the whole are adopted or rejected, before any other amendment be admitted, except it be an amendment to an amendment. *Elsynge's Mem.*, 53. When through the amendments of the committee, the Speaker pauses, and gives time for amendments to be proposed in the House to the body of the bill; as he does also if it has been reported without amendments; putting no questions but on amendments proposed; and when through the whole, he puts the question whether the bill shall be read a third time?

The procedure outlined by this provision of the parliamentary law applies to bills when reported from the Committee of the Whole; but in practice it is usual to vote on the amendments in gross. But any Member may demand a separate vote. The principle that the committee amendments should be voted on before amendments proposed by the House is recognized (IV, 4872-4876) except when it is proposed to amend a committee amendment. The Clerk reads the amendments, and the Speaker does not again read them. Frequently the House orders the previous question on the committee amendments and the bill to final passage, thus preventing further amendment. When a bill is of such nature that it does not go to Committee of the Whole, it comes before the House from the House Calendar, on which it has been placed on being reported from the standing or select committee. On being taken from the House Calendar the bill is read through and then the amendments proposed by the committee are read.

SEC. XXX.—QUASI-COMMITTEE.

If on motion and question the bill be not committed, or if no proposition for commitment be made, then the proceedings in the Senate of the United States and in Parliament are totally different. The former shall be first stated.

§ 417. Procedure
“in the House as
in Committee of
the Whole.”

The proceeding of the Senate as in a Committee of the Whole, or in quasi-committee, is precisely as in a real Committee of the Whole, taking no question but on amendments. When through the whole, they consider the quasi-committee as risen, the House resumed without any motion, question, or resolution to that effect, and the President reports that “the House, acting as in a Committee of the Whole, have had under their consideration the bill entitled, &c., and have made sundry amendments, which he will now report to the House.” The bill is then before them, as it would have been if reported from a committee, and the questions are regularly to be put again on every amendment; which being gone through, the President pauses to give time to the House to propose amendments to the body of the bill, and, when through, puts the question whether it shall be read a third time?

In the House of Representatives procedure “in the House as in Committee of the Whole” is by unanimous consent only, as the order of business gives no place for a motion that business be considered in this manner (IV, 4923). In the House an order for this procedure means merely that the bill will be read for amendment and debate under the five-minute rule (Rule XXIII, § 5), without general debate. (IV, 4924, 4925, Speaker

§§ 418, 419.

Clark, May 26, 1911, 62d Cong., first sess.). The Speaker remains in the chair, and when the bill has been gone through, he makes no report but puts the question on the engrossment and third reading and on the passage.

After progress in amending the bill in quasi-committee, a motion may be made to refer it to a special committee. If the motion prevails, it is equivalent in effect to the several votes, that the committee rise, the House resume itself, discharge the Committee of the Whole, and refer the bill to a special committee. In that case, the amendments already made fall. But if the motion fails, the quasi-committee stands *in statu quo*.

How far does this XXVIIIth rule [of the Senate] subject the House, when in quasi-committee, to the laws which regulate the proceedings of Committees of the Whole? The particulars in which these differ from proceedings in the House are the following: 1. In a committee every member may speak as often as he pleases. 2. The votes of a committee may be rejected or altered when reported to the House. 3. A committee, even of the whole, cannot refer any matter to another committee. 4. In a committee no previous question can be taken; the only means to avoid an improper discussion is to move that the committee rise; and if it be apprehended that the same discussion will be attempted on returning into committee, the House can discharge them, and proceed itself on the business, keeping down the im-

§ 418. Motion to refer admitted
"In the House as in Committee of the Whole."

§ 419. Motions and procedure in quasi-committee in Jefferson's time.

proper discussion by the previous question. 5. A committee cannot punish a breach of order in the House or in the gallery. 9 *Grey*, 113. It can only rise and report it to the House, who may proceed to punish. The first and second of these peculiarities attach to the quasi-committee of the Senate, as every day's practice proves, and it seems to be the only ones to which the XXVIIIth rule meant to subject them; for it continues to be a House, and, therefore, though it acts in some respects as a committee, in others it preserves its character as a House. Thus (3) it is in the daily habit of referring its business to a special committee. 4. It admits of the previous question. If it did not, it would have no means of preventing an improper discussion; not being able, as a committee is, to avoid it by returning into the House, for the moment it would resume the same subject there, the XXVIIIth rule declares it again a quasi-committee. 5. It would doubtless exercise its powers as a House on any breach of order. 6. It takes a question by yea and nay, as the House does. 7. It receives messages from the President and the other House. 8. In the midst of a debate it receives a motion to adjourn, and adjourns as a House, not as a committee.

In the modern practice of the House of Representatives the rule of Jefferson's Manual is followed to the extent that the House, while acting "in the House as in Committee of the Whole" may deal with disorder, take the yeas and nays, adjourn, refer to a committee even though the reading by sections may not have begun (IV, 4931, 4932), and use the previous question (which differs from the previous question of Jefferson's

§ 420. Motions
and procedure
"in the House as
in Committee of
the Whole."

§ 421.

time). But the previous question may not be moved on a single section of a bill (IV, 4930); but it may be demanded on the bill while Members yet desire to offer amendments (IV, 4926–4929). An amendment may be withdrawn at any time before action has been had on it (IV, 4935). An amendment in the nature of a substitute is in order only after consideration by sections has been completed (IV, 4933, 4934). The title also is amended after the bill has been considered (IV, 3416).

SEC. XXXI.—BILL, SECOND READING IN THE HOUSE.

In Parliament, after the bill has been read a second time, if on the motion and question it be not committed, or if no proposition for commitment be made, the speaker reads it by paragraphs, pausing between each, but putting no question but on amendments proposed; but when through the whole, he puts the question whether it shall be read a third time, if it came from the other house, or, if originating with themselves, whether it shall be engrossed and read a third time. The speaker reads sitting, but rises to put questions. The clerk stands while he reads.

§ 421. Manner of
reading a bill the
second time.

But the Senate of the United States is so much in the habit of making many and material amendments at the third reading that it has become the practice not to engross a bill till it has passed—an irregular and dangerous practice, because in this way the paper which passes the Senate is not that which goes to the other House, and that which goes to the other House as the act of the Senate has never been seen in the Senate. In reducing numerous, difficult, and illegible amendments into the text the Secretary may,

with the most innocent intentions, commit errors which can never again be corrected.

In the House of Representatives the Clerk and not the Speaker or Chairman of the Committee of the Whole reads bills on second reading. After the second reading, which is in full, the bill is open to amendment.

The bill being now as perfect as its friends can make it, this is the proper stage for those fundamentally opposed to make their first attack. All attempts at earlier periods are with disjointed efforts, because many who do not expect to be in favor of the bill ultimately, are willing to let it go on to its perfect state, to take time to examine it themselves and to hear what can be said for it, knowing that after all they will have sufficient opportunities of giving it their veto. Its two last stages, therefore, are reserved for this—that is to say, on the question whether it shall be engrossed and read a third time, and, lastly, whether it shall pass. The first of these is usually the most interesting contest, because then the whole subject is new and engaging, and the minds of the Members having not yet been declared by any trying vote the issue is the more doubtful. In this stage, therefore, is the main trial of strength between its friends and opponents, and it behooves everyone to make up his mind decisively for this question, or he loses the main battle; and accident and management may, and often do, prevent a successful rallying on the next and last question, whether it shall pass.

§ 422. Test of strength on engrossment after amendment.

§§ 423-425.

In the House of Representatives there are two other means of testing strength—one by raising the question of consideration when the bill first comes up (Rule XVI, § 3), and the other by moving to strike out the enacting words when it is first open to amendment (Rule XXIII, § 7). By these methods an adverse opinion may be expressed without permitting the bill to consume the time of the House.

§ 424. Indorsement of the title on an engrossed bill.

When the bill is engrossed the title is to be indorsed on the back, and not within the bill. *Hakew, 250.*

In the practice of the House of Representatives and the Senate the title appears in its proper place in the engrossed bill, and also is indorsed, with the number, on the back.

SEC. XXXII.—READING PAPERS.

Where papers are laid before the House or referred to a committee every Member has a right to have them once read at the table before he can be compelled to vote on them; but it is a great though common error to suppose that he has a right, *toties quoties*, to have acts, journals, accounts, or papers on the table read independently of the will of the House. The delay and interruption which this might be made to produce evince the impossibility of the existence of such a right. There is, indeed, so manifest a propriety of permitting every Member to have as much information as possible on every question on which he is to vote, that when he desires the reading, if it be seen that it is really for information and not for delay, the Speaker directs it to be read without putting a

question, if no one objects; but if objected to, a question must be put. *2 Hats., 117, 118.*

The House, by Rule XXX, has made provision as to reading a paper other than that on which the House is called to give a final vote.

It is equally an error to suppose that any Member has a right, without a question put, to lay a book or paper on the table, and have it read, on suggesting that it contains matter infringing on the privileges of the House. *Ib.*

§ 426. Papers not necessarily to be read on plea of privilege.

For the same reason a Member has not a right to read a paper in his place, if it be objected to, without leave of the House. But this rigor is never exercised but where there is an intentional or gross abuse of the time and patience of the House.

§ 427. Member not always privileged to read a paper in his place.

A Member has not a right even to read his own speech, committed to writing, without leave. This also is to prevent an abuse of time, and therefore is not refused but where that is intended. *2 Grey, 227.*

A report of a committee of the Senate on a bill from the House of Representatives being under consideration: on motion that the report of the committee of the House of Representatives on the same bill be read in the Senate, it passed in the negative. *Feb. 28, 1793.*

§ 428. Reports of committees not read except on order or in debate.

In the House of Representatives ordinary reports are read only in time of debate (V, 5292), and subject to the authority of the House (V, 5293). But in a few cases, where a report does not accompany a bill or other

§§ 429-432.

proposition of action, but presents facts and conclusions, it is read to the House if acted on (II, 1364; IV, 4663).

Formerly, when papers were referred to a committee, they used to be first read; but of late only the titles, unless a Member insists they shall be read, and then nobody can oppose it. *2 Hats., 117.*

§ 429. Reading of papers on reference.

In the House of Representatives under the rules petitions and communications are referred through the Clerk's desk, so that there is no opportunity for reading before reference (Rule XXII, § 1; Rule XXIV, § 2). These rules do not apply to Presidents' messages, however.

SEC. XXXIII.—PRIVILEGED QUESTIONS.

It is no possession of a bill unless it be delivered to the Clerk to read, or the Speaker reads the title. *Lex. Parl., 274; Elysynge Mem., 85; Ord. House of Commons, 64.*

§ 430. Possession of a bill by the House.

It is a general rule that the question first moved and seconded shall be first put. *Scob., 28, 22; 2 Hats., 81.* But this rule gives way to what may be called privileged questions; and the privileged questions are of different grades among themselves.

§ 431. Theory as to privileged questions.

In the House of Representatives, by rule and practice the system of privileged motions and privileged questions has been highly developed (Rules XI, § 61; XVI, § 4; XXIV, § 1, etc.).

A motion to adjourn simply takes place of all others; for otherwise the House might be kept sitting against its will, and indefinitely. Yet this motion can not be received after another question is actually put and while the House is engaged in voting.

§ 432. Precedence of the motion to adjourn.

The rules and practice of the House of Representatives have prescribed comprehensively the privilege and status of the motion to adjourn (Rule XVI, § 4). The motion intervenes between the putting of the question and the voting, and also between the different methods of voting, as between a vote by division and a vote by yeas and nays, as after the yeas and nays are ordered and before the roll call begins (V, 5366). But after the roll call begins it may not be interrupted (V, 6053).

Orders of the day take place of all other questions, except for adjournment—that is to say, the question which is the subject of an order is made a privileged one, *pro hac vice*. The order is a repeal of the general rule as to this special case. When any Member moves, therefore, for the order of the day to be read, no further debate is permitted on the question which was before the House; for if the debate might proceed it might continue through the day and defeat the order. This motion, to entitle it to precedence, must be for the orders generally, and not for any particular one; and if it be carried on the question, “Whether the House will now proceed to the orders of the day?” they must be read and proceeded on in the course in which they stand, 2 *Hats.*, 83; for priority of order gives priority of right, which can not be taken away but by another special order.

“Orders of the day,” in the technical sense, have disappeared from the practice of the House (IV, 3057) although in one of the rules a mention of them has survived (Rule XXIV, § 1). “Special orders,” which are used occasionally for bringing up matters not regularly in order, are based on a theory entirely different from that of the orders of the day, which were a part of the regular and daily order of business (IV, 3152).

§§ 484-486.

After these there are other privileged questions, which will require considerable explanation.

§ 484. Jefferson's discussion of certain privileged motions.

It is proper that every parliamentary assembly should have certain forms of questions, so adapted as to enable them fitly to dispose of every proposition which can be made to them. Such are: 1. The previous question. 2. To postpone indefinitely. 3. To adjourn a question to a definite day. 4. To lie on the table. 5. To commit. 6. To amend. The proper occasion for each of these questions should be understood.

The House of Representatives by Rule XVI, § 4, has established the priority and other conditions of motions of this kind.

1. When a proposition is moved which it is useless or inexpedient now to express or discuss, the previous question has been introduced for suppressing for that time the motion and its discussion. 3 *Hats.*, 188, 189.

§ 485. Obsolete use of the previous question.

The previous question of the parliamentary law has been changed by the House of Representatives into an instrument of entirely different use (V, 5445; Rule XVII).

2. But as the previous question gets rid of it only for that day, and the same proposition may recur the next day, if they wish to suppress it for the whole of that session, they postpone it indefinitely. 3 *Hats.*, 183. This quashes the proposition for that session, as an indefi-

§ 486. The motion to postpone indefinitely.

nite adjournment is a dissolution, or the continuance of a suit *sine die* is a discontinuance of it.

As already explained, in the House of Representatives the previous question is no longer used as a method of postponement (V, 5445). The House uses the motion to postpone indefinitely, and in Rule XVI, § 4, and the practice thereunder has defined the nature and use of the motion.

3. When a motion is made which it will be proper to act on, but information is wanted, or something more pressing claims the present time, the question or debate is adjourned to such day within the session as will answer the views of the House. 2 *Hats.*, 81. And those who have spoken before may not speak again when the adjourned debate is resumed. 2 *Hats.*, 73. Sometimes, however, this has been abusively used by adjourning it to a day beyond the session, to get rid of it altogether, as would be done by an indefinite postponement.

The House of Representatives does not use the motion to adjourn a debate. But it accomplishes the purposes of such a procedure by the motion to postpone to a day certain, which it applies, not to a debate, but to the bill or other proposition before the House. Of course, if a bill which is under debate is postponed, the effect is to postpone the debate. The conditions and use of the motion are treated under Rule XVI, § 4.

4. When the House has something else which claims its present attention, but would be willing to reserve in their power to take up a proposition whenever it shall suit them, they order it to lie on their table. It may then be called for at any time.

§ 487. Postponement to a day certain.

§ 488. Motion to lay on the table.

§§ 439, 440.

This is the use of the motion to lay on the table which is established in general parliamentary law, and was followed in the early practice of the House of Representatives. But by an interesting evolution in the House the motion has now come to serve an entirely new purpose, being used for the final, adverse disposition of a matter (Rule XVI, § 4; V, 5389). And a matter once laid on the table may be taken therefrom only by suspension of the rules (V, 6288) or similar process, unless it be a matter of privilege (V, 5438, 5439).

5. If the proposition will want more amendment and digestion than the formalities of the House will conveniently admit, they refer it to a committee.

§ 439. Delegation of consideration to committees.

6. But if the proposition be well digested, and may need but few and simple amendments, and especially if these be of leading consequence, they then proceed to consider and amend it themselves.

In the House of Representatives it is a general rule that all business goes to committees before receiving consideration in the House itself. Occasionally a question of privilege or a minor matter of business is presented and considered at once by the House.

The Senate, in their practice, vary from this regular gradation of forms. Their practice comparatively with that of Parliament stands thus:

§ 440. Privileged motions in the Senate and in Parliament.

FOR THE PARLIAMENTARY: THE SENATE USES:

Postponement indefinite,	Postponement to a day beyond the session.
Adjournment,	Postponement to a day within the session.
Lying on table,	{ Postponement indefinite. { Lying on the table.

In their eighth rule, therefore, which declares that while a question is before the Senate no motion shall be received, unless it be for the previous question, or to postpone, commit, or amend the main question, the term postponement must be understood according to their broad use of it, and not in its parliamentary sense. Their rule, then, establishes as privileged questions the previous question, postponement, commitment, and amendment.

The House of Representatives govern these motions by Rule XVI, § 4.

But it may be asked: Have these questions any
 § 441. Obsolete pro- privilege among themselves? or are
 visions as to priority of privi- they so equal that the common prin-
 leged motions. ciple of the "first moved first put"
 takes place among them? This will need explana-
 tion. Their competitions may be as follows:

- | | | |
|-----------------------------------|----------|--|
| 1. Previous question and | postpone | } In the first, second, and third classes, and the first member of the fourth class, the rule "first moved first put" takes place. |
| | commit | |
| | amend | |
| 2. Postpone and previous question | commit | |
| | amend | } In the first, second, and third classes, and the first member of the fourth class, the rule "first moved first put" takes place. |
| 3. Commit and previous question | postpone | |
| | amend | |
| 4. Amend and previous question | postpone | |
| | commit | |

In the first class, where the previous question is first moved, the effect is peculiar; for it not only prevents the after motion to postpone or commit from being put to question before it, but also from being put after it; for if the previous question be decided affirmatively, to wit, that the main question shall *now* be put, it would of course be against the decision to postpone or commit; and if it be decided negatively, to wit, that the main question shall not now be put, this puts the House out of possession of the main question, and consequently there is nothing before them to postpone or commit. So that neither voting for nor against the previous question will enable the advocates for postponing or committing to get at their object. Whether it may be amended shall be examined hereafter.

Rule XVI, § 4, of the House of Representatives renders these provisions as to priority of motions obsolete. The entire change in the character of the previous question also renders obsolete the discussion of its relations to other motions.

Second class. If postponement be decided affirmatively, the proposition is removed from before the House, and consequently there is no ground for the previous question, commitment or amendment; but if decided negatively (that it shall not be postponed), the main question may then be suppressed by the previous question, or may be committed, or amended.

The previous question is used now for bringing a vote on the main question and not for suppressing it.

§ 442. General principles of priority of motions.

The third class is subject to the same observations as the second.

The fourth class. Amendment of the main question first moved, and afterwards the previous question, the question of amendment shall be first put.

In present practice of the House the question on the previous question would be put first, and being decided affirmatively would force a vote on the amendment and then on the main question.

Amendment and postponement competing, postponement is first put, as the equivalent proposition to adjourn the main question would be in Parliament. The reason is that the question for amendment is not suppressed by postponing or adjourning the main question, but remains before the House whenever the main question is resumed; and it might be that the occasion for other urgent business might go by, and be lost by length of debate on the amendment, if the House had it not in their power to postpone the whole subject.

Amendment and commitment. The question for committing, though last moved shall be first put; because, in truth, it facilitates and befriends the motion to amend. *Scobell* is express: "On motion to amend a bill, anyone may notwithstanding move to commit it, and the question for commitment shall be first put." *Scob.*, 46.

These principles of priority of privileged motions are recognized in the House of Representatives, and are provided for by Rule XVI, § 4.

§§ 443, 444.

We have hitherto considered the case of two or more of the privileged questions contending for privilege between themselves, when both are moved on the original or main question; but now let us suppose one of them to be moved, not on the original primary question, but on the secondary one, *e. g.*:

§ 443. Application of the previous question to debatable secondary and privileged motions.

Suppose a motion to postpone, commit, or amend the main question, and that it be moved to suppress that motion by putting a previous question on it. This is not allowed, because it would embarrass questions too much to allow them to be piled on one another several stories high; and the same result may be had in a more simple way—by deciding against the postponement, commitment, or amendment. *2 Hats., 81, 2, 3, 4.*

While the general principle that one secondary or privileged motion should not be applied to another is generally recognized in the House of Representatives, yet the entire change in the nature of the previous question (V, 5445) from a means of postponing a matter to a means of compelling an immediate vote, makes obsolete the parliamentary rule. For as the motions to postpone, commit, and amend, are all debatable, the modern previous question of course applies to them (Rule XVII, § 1).

Suppose a motion for the previous question, or commitment or amendment of the main question, and that it be then moved to postpone the motion for the previous question, or for commitment or amendment of the main question. 1. It would be absurd to postpone the previous question, commitment, or amendment,

§ 444. Motion to postpone not applicable to other secondary motions.

alone, and thus separate the appendage from its principal; yet it must be postponed separately from its original, if at all; because the eighth rule of the Senate says that when a main question is before the House no motion shall be received but to commit, amend, or pre-question the original question, which is the parliamentary doctrine also. Therefore the motion to postpone the secondary motion for the previous question, or for committing or amending, can not be received. 2. This is a piling of questions one on another; which, to avoid embarrassment, is not allowed. 3. The same result may be had more simply by voting against the previous question, commitment, or amendment.

Suppose a commitment moved of a motion for the previous question, or to postpone or amend. The first, second, and third reasons, before stated, all hold good against this.

The principles of this paragraph are in harmony with the practice of the House of Representatives, which provides further that a motion to suspend the rules may not be postponed (V, 5322).

Suppose an amendment moved to a motion for the previous question. Answer: The previous question can not be amended. Parliamentary usage, as well as the ninth rule of the Senate, has fixed its form to be, "Shall the main question be now put?"—i. e., at this instant; and as the present instant is but one, it can admit of no modification. To change it to to-morrow,

§ 445. The motion to amend not applicable to the previous question.

§§ 446, 447.

or any other moment, is without example and without utility. * * *

Although the nature of the previous question has entirely changed, yet the principle of the parliamentary law applies to the new form.

* * * But suppose a motion to amend a motion

§ 446. Motion to amend applicable to motions to postpone or refer.

for postponement, as to one day instead of another, or to a special instead of an indefinite time. The useful character of amendment gives it a privilege of attaching itself to a secondary and privileged motion: that is, we may amend a postponement of a main question. So, we may amend a commitment of a main question, as by adding, for example, "with instructions to inquire," &c. * * *

This principle is recognized in the practice of the House of Representatives (V, 5521).

* * * In like manner, if an amendment be

§ 447. Amendment in the third degree not in order.

moved to an amendment, it is admitted; but it would not be admitted in another degree, to wit, to amend an amendment to an amendment of a main question. This would lead to too much embarrassment. The line must be drawn somewhere, and usage has drawn it after the amendment to the amendment. The same result must be sought by deciding against the amendment to the amendment, and then moving it again as it was wished to be amended. In this form it becomes only an amendment to an amendment.

This rule of the parliamentary law is considered fundamental in the House of Representatives (Rule XIX).

[In filling a blank with a sum, the largest sum shall be first put to the question, by the thirteenth rule of the Senate, contrary to the rule of Parliament, which privileges the smallest sum and longest time. 5 *Grey*, 179; 2 *Hats.*, 8, 83; 3 *Hats.*, 132, 133.] And this is considered to be not in the form of an amendment to the question, but as alternative or successive originals. In all cases of time or number, we must consider whether the larger comprehends the lesser, as in a question to what day a postponement shall be, the number of a committee, amount of a fine, term of an imprisonment, term of irredeemability of a loan, or the terminus in quem in any other case; then the question must begin a *maximo*. Or whether the lesser includes the greater, as in questions on the limitation of the rate of interest, on what day the session shall be closed by adjournment, on what day the next shall commence, when an act shall commence or the terminus a quo in any other case where the question must begin a *minimo*; the object being not to begin at that extreme which, and more, being within every man's wish, no one could negative it, and yet, if he should vote in the affirmative, every question for more would be precluded; but at that extreme which would unite few, and then to advance or recede till you get to a number which will unite a bare majority. 3 *Grey*, 376, 384, 385. "The fair question in this case is not that to which, and more, all will agree, but

§§ 449, 450.

whether there shall be addition to the question.”
1 Grey, 365.

The Thirteenth Rule of the Senate has been dropped. The House of Representatives has no rule on the subject other than this provision of the parliamentary law. It is very rare for the House to fill blanks for numbers. When a number is to be changed by amendment, the practice of the House permits to be pending a second number as an amendment, a third as an amendment to the amendment, a fourth as a substitute, and a fifth as an amendment to the substitute.

Another exception to the rule of priority is when a motion has been made to strike out, or agree to, a paragraph. Motions to amend it are to be put to the question before a vote is taken on striking out or agreeing to the whole paragraph.

§ 449. Priority of amendments over motions to strike out or agree.

In the House of Representatives the principle that a text should be perfected before a question is taken on striking it out, and that an amendment should be perfected before agreeing to it, is well established. But in considering bills, even by paragraphs, the House does not agree to the paragraphs severally; but after amending one passes to the next, and the question on agreeing is taken only on the whole bill by the several votes on engrossment and passage.

But there are several questions which, being incidental to every one, will take place of every one, privileged or not; to wit, a question of order arising out of any other question must be decided before that question. *2 Hats., 88.*

§ 450. Incidental questions, like points of order, which intervene during consideration of the main question.

This principle governs the procedure of the House of Representatives; but a question of order arising after a motion for the previous question must be decided without debate (Rule XVII, § 3.)

A matter of privilege arising out of any question, or from a quarrel between two Members, or any other cause, supersedes the consideration of the original question, and must be first disposed of. *2 Hats., 88.*

§ 451. Matters of privilege as intervening questions.

Rule IX of the House of Representatives and the practice there under, confirm and amplify the principles of this provision of the parliamentary law.

Reading papers relative to the question before the House. This question must be put before the principal one. *2 Hats., 88.*

§ 452. Intervention of questions relating to reading of papers.

This provision is applicable in the House of Representatives so far as it concerns papers other than those on which the House is called on to give a final vote. The House has treated it more fully in Rule XXX and the practice thereunder.

Leave asked to withdraw a motion. The rule of Parliament being that a motion made and seconded is in the possession of the House, and can not be withdrawn without leave, the very terms of the rule imply that leave may be given, and, consequently, may be asked and put to the question.

§ 453. Withdrawal of motions.

The House of Representatives does not vote on the withdrawal of motions; but provides by Rules XVI, § 2, and XXIII, § 5, the conditions under which a Member may of his own right withdraw a motion.

SEC. XXXIV.—THE PREVIOUS QUESTION.

When any question is before the House, any Member may move a previous question, "Whether that question (called the main question) shall now be put?" If it pass in the affirmative, then the main question is to

§ 454. The previous question of Parliament.

§§ 455, 456.

be put immediately, and no man may speak anything further to it, either to add or alter. *Memor. in Hakew., 28; 4 Grey, 27.*

The previous question being moved and seconded, the question from the Chair shall be, § 455. Manner of putting the previous question. "Shall the main question be now put?" and if the nays prevail, the main question shall not then be put.

In the modern practice of the House of Representatives the previous question is put as follows: "The gentleman from ——— demands the previous question. As many as are in favor of ordering the previous question will say aye; as many as are opposed will say no" (V, 5443).

This kind of question is understood by Mr. Hatsell to have been introduced in 1604. § 456. History, use, etc., of the previous question of Parliament. *Hats., 80.* Sir Henry Vane introduced it. *2 Grey, 113, 114; 3 Grey, 384.* When the question was put in this form, "Shall the main question be put?" a determination in the negative suppressed the main question during the session; but since the words "now put" are used, they exclude it for the present only; formerly, indeed, only till the present debate was over, *4 Grey, 43*, but now for that day and no longer. *2 Grey, 113, 114.*

Before the question "Whether the main question shall now be put?" any person might formerly have spoken to the main question, because otherwise he would be precluded from speaking to it at all. *Mem. in Hakew., 28.*

The proper occasion for the previous question is when a subject is brought forward of a delicate

nature as to high personages, &c., or the discussion of which may call forth observations which might be of injurious consequences. Then the previous question is proposed, and in the modern usage the discussion of the main question is suspended and the debate confined to the previous question. The use of it has been extended abusively to other cases, but in these it has been an embarrassing procedure. Its uses would be as well answered by other more simple parliamentary forms, and therefore it should not be favored, but restricted within as narrow limits as possible.

As explained in connection with Rule XVII, the House of Representatives has changed entirely the old use of the previous question (V, 5445).

Whether a main question may be amended after the previous question on it has been moved and seconded? 2 *Hats.*, 88, says, if the previous question has been moved and seconded, and also proposed from the Chair (by which he means stated by the Speaker for debate), it has been doubted whether an amendment can be admitted to the main question. He thinks it may, after the previous question moved and seconded, but not after it has been proposed from the Chair. In this case he thinks the friends to the amendment must vote that the main question be not now put, and then move their amended question, which being made new by the amendment, is no longer the same which has been just suppressed, and

§ 457. Discussion as to certain obsolete features of the previous question.

therefore may be proposed as a new one. But this proceeding certainly endangers the main question by dividing its friends, some of whom may choose it unamended rather than lose it altogether, while others of them may vote, as Hatsell advises, that the main question be not now put, with a view to move it again in an amended form. The enemies of the main question, by this maneuver to the previous question, get the enemies to the amendment added to them on the first vote, and throw the friends of the main question under the embarrassment of rallying again as they can. To support this opinion, too, he makes the deciding circumstance, whether an amendment may or may not be made, to be, that the previous question has been proposed from the Chair. But, as the rule is that the House is in possession of a question as soon as it is moved and seconded, it can not be more than possessed of it by its being also proposed from the Chair. It may be said, indeed, that the object of the previous question being to get rid of a question, which it is not expedient should be discussed, this object may be defeated by moving to amend; and in the discussion of that motion, involving the subject of the main question. But so may the object of the previous question be defeated by moving the amended question, as Mr. Hatsell proposes, after the decision against putting the original question. He acknowledges, too, that the practice has been to admit pre-

vious amendments, and only cites a few late instances to the contrary. On the whole, I should think it best to decide it *ab inconvenienti*, to wit: Which is most inconvenient, to put it in the power of one side of the House to defeat a proposition by hastily moving the previous question and thus forcing the main question to be put unamended, or to put it in the power of the other side to force on, incidentally at least, a discussion which would be better avoided? Perhaps the last is the least inconvenience, inasmuch as the Speaker, by confining the discussion rigorously to the amendment only, may prevent their going into the main question; and inasmuch also as so great a proportion of the cases in which the previous question is called for are fair and proper subjects of public discussion and ought not to be obstructed by a formality introduced for questions of a peculiar character.

This discussion has no bearing on the modern uses of the previous question.

SEC. XXXV.—AMENDMENTS.

§ 458. Right of the Member who has spoken to the main question to speak to an amendment.

On an amendment being moved, a Member who had spoken to the main question may speak again to the amendment. *Scob., 23.*

This parliamentary rule is of effect in the House of Representatives, where the hour rule of debate (Rule XIV, § 2) has been in force for many years. A Member who has spoken an hour to the main question, may speak another hour to an amendment (V, 4994).

§§ 459, 460.

If an amendment be proposed inconsistent with one already agreed to, it is a fit ground for its rejection by the House, but not within the competence of the Speaker to suppress as if it were against order.

§ 459. The Speaker not to decide as to consistency of a proposed amendment with one already agreed to.

For were he permitted to draw questions of consistence within the vortex or order, he might usurp a negative on important modifications, and suppress, instead of subserving, the legislative will.

The practice of the House of Representatives follows and extends the principle set forth by Jefferson. Thus it has been held that the fact that a proposed amendment is inconsistent with the text or embodies a proposition already voted (II, 1328-1336), or would in effect change a provision of text to which both Houses have agreed (II, 1335; V, 6183-6185), or is contained in substance in a later portion of the bill (II, 1327), is a matter to be passed on by the House rather than by the Speaker. It is for the House rather than the Speaker to decide on the legislative effect of a proposition (II, 1323, 1324), and the change of a single word in the text of a proposition is sufficient to prevent the Speaker ruling it out of order as one already disposed of by the House (II, 1274).

Amendments may be made so as totally to alter the nature of the proposition; and it is a way of getting rid of a proposition by making it bear a sense different from what it was intended by the movers, so that they vote against it themselves. *2 Hats.*, 79; 4, 82, 84. A new bill may be ingrafted, by way of amendment, on the words, "Be it enacted," etc. *1 Grey*, 190, 192.

§ 460. The parliamentary law and the rules of the House as to germane amendments.

This was the rule of Parliament, which did not require an amendment to be germane (V, 5802, 5825). But the House of Representatives, from its first organization, has by rule required that an amendment should be germane to the pending proposition (Rule XVI, §7).

If it be proposed to amend by leaving out certain words, it may be moved, as an amendment to this amendment, to leave out a part of the words of the amendment, which is equivalent to leaving them in the bill. 2 *Hats.*, 80, 9. The parliamentary question is, always, whether the words shall stand part of the bill.

In the House of Representatives the question herein described is never put as in Parliament, but is always, whether the words shall be stricken out; and if there is a desire that certain of the words included in the amendment remain part of the bill, it is expressed, not by amending the amendment, but by a preferential motion to strike from the specified words a portion of them. If this is carried the portion thus removed remains a part of the bill and the vote recurs on striking out the residue (V, 5770). And when a motion to strike out certain words is disagreed to, it is in order to move to strike out a portion of those words (V, 5769); but when it is proposed to strike out certain words in a paragraph, it is not in order to amend those words by including with them other words of the paragraph (V, 5768). It is in order to insert by way of amendment a paragraph similar (but not actually identical) to one already stricken out by amendment (V, 5760).

When it is proposed to amend by inserting a paragraph, or part of one, the friends of the paragraph may make it as perfect as they can by amendments before the question is put for inserting it. If it be received, it cannot be amended afterward in the same stage, because the House has, on a vote, agreed to it in that form. In like manner, if it is proposed to amend by striking out a paragraph, the friends of the paragraph are first to make it as perfect as they can by amendments, before the question is put for striking it out. If on the question it be retained, it cannot be amended

§ 461. The amendment to strike out certain words of a bill.

§ 462: Principles as to perfecting before inserting or striking out.

afterward, because a vote against striking out is equivalent to a vote agreeing to it in that form.

The principles herein set forth are recognized as in force in the House of Representatives, with the exception that Rule XVI, § 7, specifically provides that "a motion to strike out being lost shall neither preclude amendment nor a motion to strike out and insert." But after an amendment to insert has been agreed to, the matter inserted ordinarily may not then be amended (V, 5761-5763) in any way that would change its text; but an amendment may be added at the end (V, 5759, 5764, 5765). When it is proposed to perfect a paragraph the motions to insert or strike out, if already pending, must remain in abeyance until the amendments to perfect have been moved and voted on (V, 5758); and while amendments are pending to a section a motion to strike it out may not be offered (V, 5771). In the peculiar situation wherein, when a motion to strike out a paragraph is pending, the paragraph is perfected by a substitute amendment, the pending motion to strike out must fall, since it would not be in order to strike out exactly what it has just been voted to insert (V, 5792).

§ 468. Reading the motion and putting the question on a motion to strike out and insert.

When it is moved to amend by striking out certain words and inserting others, the manner of stating the question is first to read the whole passage to be amended as it stands at present, then the words proposed to be struck out, next those to be inserted, and lastly the whole passage as it will be when amended. And the question, if desired, is then to be divided, and put first on striking out. If carried, it is next on inserting the words proposed. If that be lost, it may be moved to insert others. 2 *Hats.*, 80, 7.

Rule XVI, § 7, of the House of Representatives provides specifically that the motion to strike out and insert shall not be divided. Otherwise, as to the manner of stating the question, it is usual for the clerk to read only the words to be stricken out and the words to be inserted. Usually this is sufficient, as the Members may have before them printed copies of the bill under consideration.

A motion is made to amend by striking out certain words and inserting others in their place, which is negatived. Then it is moved to strike out the same words, and to insert others of a tenor entirely different from those first proposed. It is negatived. Then it is moved to strike out the same words and insert nothing, which is agreed to. All this is admissible, because to strike out and insert A is one proposition. To strike out and insert B is a different proposition. And to strike out and insert nothing is still different. And the rejection of one proposition does not preclude the offering a different one. Nor would it change the case were the first motion divided by putting the question first on striking out, and that negatived; for, as putting the whole motion to the question at once would not have precluded, the putting the half of it cannot do it.

As to Jefferson's supposition that the principle would hold good in case of division of the motion to strike out and insert it is not necessary to inquire, since Rule XVI, § 7, of the House of Representatives forbids division of the motion. In a footnote Jefferson expressed himself as follows: "In the case of a division of the question, and a decision against striking out, I advance doubtingly the opinion here expressed. I find no authority either way, and I know it may be viewed under a different aspect. It may be thought that, having decided separately not to strike out the passage, the same question for striking out cannot be put over again, though with a view to a different insertion. Still I think it more reasonable and convenient to consider the striking out and insertion as forming one proposition, but should readily yield to any evidence that the contrary is the practice in Parliament."

The principle set forth by Jefferson as to repetition of the motion to strike out prevails in the House of Representatives, where it has been held in order, after the failure of a motion to strike out certain words, to move to strike out a portion of those words (V, 5769). When a bill is under consideration by paragraphs, a motion to strike out applies only to the paragraph under consideration (V, 5774).

§ 464. Conditions of repetition of motions to strike out and insert.

§ 465. Application of the motion to strike out.

§§ 466-468.

But if it had been carried affirmatively to strike out the words and to insert A, it could not afterward be permitted to strike out A and insert B. The mover of B should have notified, while the insertion of A was under debate, that he would move to insert B; in which case those who preferred it would join in rejecting A.

§ 466. Effect of affirmative vote on motion to strike out and insert.

After A is inserted, however, it may be moved to strike out a portion of the original paragraph, comprehending A, provided the coherence to be struck out be so substantial as to make this effectively a different proposition; for then it is resolved into the common case of striking out a paragraph after amending it. Nor does anything forbid a new insertion, instead of A and its coherence.

§ 467. Conditions of striking out an amendment already agreed to.

The principles of this paragraph have been followed in the House of Representatives (V, 5763), but in one case wherein words embodying a distinct substantive proposition had been agreed to as an amendment to a paragraph, it was held not in order to strike out a part of the words of this amendment with other words of the paragraph (V, 5766).

In Senate, January 25, 1798, a motion to postpone until the second Tuesday in February some amendments proposed to the Constitution; the words "until the second Tuesday in February" were struck out by way of amendment. Then it was moved to add, "until the first day of June." Objected that it was not in order, as the question should be first put on the longest time;

§ 468. Amendments filling blanks as to time.

therefore, after a shorter time decided against, a longer cannot be put to question. It was answered that this rule takes place only in filling blanks for time. But when a specific time stands part of a motion, that may be struck out as well as any other part of the motion; and when struck out, a motion may be received to insert any other. In fact, it is not until they are struck out, and a blank for the time thereby produced, that the rule can begin to operate, by receiving all the propositions for different times, and putting the questions successively on the longest. Otherwise it would be in the power of the mover by inserting originally a short time, to preclude the possibility of a longer, for till the short time is struck out, you cannot insert a longer; and if, after it is struck out, you cannot do it, then it cannot be done at all. Suppose the first motion had been made to amend by striking out "the second Tuesday in February," and inserting instead thereof "the first of June," it would have been regular, then, to divide the question, by proposing first the question to strike out, and then that to insert. Now, this is precisely the effect of the present proceeding; only, instead of one motion and two questions, there are two motions and two questions to effect it—the motion being divided as well as the question.

The motion to strike out and insert may not be divided in the House of Representatives (Rule XVI, § 7).

§§ 469-472.

When the matter contained in two bills might be better put into one, the manner is to reject the one and incorporate its matter into another bill by way of amendment. So if the matter of one bill would be better distributed into two, any part may be struck out by way of amendment, and put into a new bill. * * *

In the modern practice of the House of Representatives each bill comes before the House by itself; and if it were proposed to join one bill to another it would be done by offering the text of the one as an amendment to the other, without disturbing the first bill in its place on the calendar. Where it is proposed to divide a bill, the object is accomplished in the House of Representatives by moving to recommit with instructions to the committee to report two bills (V, 5527, 5528).

* * * If a section is to be transposed, a question must be put on striking it out where it stands and another for inserting it in the place desired.

§ 470. Transposition of the sections of a bill.

This principle is followed in the practice of the House of Representatives (V, 5775, 5776).

A bill passed by the one House with blanks. These may be filled up by the other by way of amendments, returned to the first as such, and passed. 3 Hats., 83.

§ 471. Filling blanks left by the other House.

The number prefixed to the section of a bill, being merely a marginal indication, and no part of the text of the bill, the Clerk regulates that—the House or committee is only to amend the text.

§ 472. Clerk amends the section numbers of a bill.

SEC. XXXVI.—DIVISION OF THE QUESTION.

If a question contain more parts than one, it may be divided into two or more questions. *Mem. in Hakew., 29.* But not as the right of an individual member, but with the consent of the House. For who is to decide whether a question is complicated or not—where it is complicated—into how many propositions it may be divided? The fact is, that the only mode of separating a complicated question is by moving amendments to it; and these must be decided by the House, on a question, unless the House orders it to be divided; as, on the question, December 2, 1640, making void the election of the knights for Worcester, on a motion it was resolved to make two questions of it, to wit, one on each knight. *2 Hats., 85, 86.* So, wherever there are several names in a question, they may be divided and put one by one. *9 Grey, 444.* So, 1729, April 17, on an objection that a question was complicated, it was separated by amendment. *2 Hats., 79.*

The House of Representatives, by Rule XVI, § 6, and the practice thereunder, has established a procedure differing materially from that above set forth.

The soundness of these observations will be evident from the embarrassments produced by the XVIIIth rule of the Senate, which says, “if the question in debate contains several points, any member may have the same divided.”

§ 473. Parliamentary law for division of the question.

§ 474. Jefferson's discussion of division of the question.

1798, May 30, the alien bill in quasi-committee. To a section and proviso in the original, had been added two new provisos by way of amendment. On a motion to strike out the section as amended, the question was desired to be divided. To do this it must be put first on striking out either the former proviso, or some distinct member of the section. But when nothing remains but the last member of the section and the provisos, they cannot be divided so as to put the last member to question by itself, for the provisos might thus be left standing alone as exceptions to a rule when the rule is taken away; or the new provisos might be left to a second question, after having been decided on once before at the same reading, which is contrary to rule. But the question must be on striking out the last member of the section as amended. This sweeps away the exceptions with the rule, and relieves from inconsistency. A question to be divisible must comprehend points so distinct and entire that one of them being taken away, the other may stand entire. But a proviso or exception, without an enacting clause, does not contain an entire point or proposition.

May 31.—The same bill being before the Senate. There was a proviso that the bill should not extend—
1. To any foreign minister; nor, 2. To any person to whom the President should give a passport; nor, 3. To any alien merchant conforming himself to such

regulations as the President shall prescribe; and a division of the question into its simplest elements was called for. It was divided into four parts, the 4th taking in the words "conforming himself," &c. It was objected that the words "any alien merchant," could not be separated from their modifying words, "conforming," &c., because these words, if left by themselves, contain no substantive idea, will make no sense. But admitting that the divisions of a paragraph into separate questions must be so made as that each part may stand by itself, yet the House having, on the question, retained the two first divisions, the words "any alien merchant" may be struck out, and their modifying words will then attach themselves to the preceding description of persons, and become a modification of that description.

When a question is divided, after the question on the 1st member, the 2d is open to debate and amendment; because it is a known rule that a person may rise and speak at any time before the question has been completely decided, by putting the negative as well as affirmative side. But the question is not completely put when the vote has been taken on the first member only. One-half of the question, both affirmative and negative, remains still to be put. See *Execut. Jour.*, June 25, 1795. The same decision by President Adams.

§ 475. Division of question as related to debate or amendment.

SEC. XXXVII.—COEXISTING QUESTIONS.

It may be asked whether the House can be in session of two motions or propositions at the same time? so that, one of them being decided, the other goes to question without being moved anew? The answer must be special. When a question is interrupted by a vote of adjournment, it is thereby removed from before the House, and does not stand *ipso facto* before them at their next meeting, but must come forward in the usual way. So, when it is interrupted by the order of the day. Such other privileged questions also as dispose of the main question (e. g., the previous question, postponement, or commitment), remove it from before the House. But it is only suspended by a motion to amend, to withdraw, to read papers, or by a question of order or privilege, and stands again before the House when these are decided. None but the class of privileged questions can be brought forward while there is another question before the House, the rule being that when a motion has been made and seconded, no other can be received except it be a privileged one.

§ 476. Fundamental principles as to coexisting questions.

The principles of this provision must, of course, be viewed in the light of a more highly perfected order of business than existed in Jefferson's time (Rule XXIV). The motion to withdraw is not known in the practice of the House, not being among the motions enumerated in Rule XVI, § 4.

SEC. XXXVIII.—EQUIVALENT QUESTIONS.

If, on a question for rejection, a bill be retained, it passes, of course, to its next reading. *Hakew.*, 141; *Scob.*, 42. And a question for a second reading, determined negatively, is a rejection without further question. 4 *Grey*, 149. And see *Elsynge's Memor.*, 42, in what cases questions are to be taken for rejection.

The House of Representatives has abandoned the question "Shall the bill be rejected?" (IV, 3391), and the question is now taken in accordance with Rule XXI, § 1. A vote is not taken on the second reading, the first test coming in the modern practice of the House on the engrossment and third reading.

Where questions are perfectly equivalent, so that the negative of the one amounts to the affirmative of the other, and leaves no other alternative, the decision of the one concludes necessarily the other. 4 *Grey*, 157. Thus the negative of striking out amounts to the affirmative of agreeing; and therefore to put a question on agreeing after that on striking out, would be to put the same question in effect twice over. Not so in questions of amendments between the two Houses. A motion to recede being negatived, does not amount to a positive vote to insist, because there is another alternative, to wit, to adhere.

The principles set forth in this paragraph are recognized by the practice of the House of Representatives; but Jefferson's use of the motion to strike out as an illustration is no longer justified, since the practice of the House

§§ 479, 480.

under Rule XVI, § 7, does not permit the negative of the motion to strike out to be equivalent to the affirmative of agreeing.

A bill originating in one House is passed by the other with an amendment. A motion in the originating House to agree to the amendment is negatived. Does there result from this a vote of disagreement, or must the question on disagreement be expressly voted? The question respecting amendments from another House are—1st, to agree; 2d, disagree; 3d, recede; 4th, insist; 5th, adhere.

§ 479. Equivalent questions on amendments between the Houses.

When House refuses to concur in Senate amendment, equivalent to disagreeing, and latter motion not put. (Speaker Clark, June 21, 1911, 62d Cong., 1st sess., Cong. Rec., p. 2412.)

In the House of Representatives and the Senate the order of precedence of motions is as given in the Parliamentary law, and the motions take precedence in that order without regard to the order in which they are moved (V, 6270, 6324). But a motion to amend an amendment of the other House has precedence of the motion to agree or disagree (V, 6164, 6169–6171). But it has been held that when the previous question has been demanded or ordered on a motion to concur, a motion to amend is not in order (V, 5488). The motion to refer also takes precedence of the motions to agree or disagree (V, 6172–6174), but the demanding or ordering of the previous question does not prevent a motion to refer (V, 5575).

1st. To agree; 2d. To disagree.—Either of these concludes the other necessarily, for the positive of either is exactly the equivalent to the negative of the other, and no other alternative remains. On either motion amendments to the amendment may be proposed; e. g., if it be moved to disagree, those who are for the amendment have a right to propose amendments, and to make it as perfect as they can, before the question of disagreeing is put.

§ 480. The motions to agree and disagree as related to motions to amend.

3d. To recede.—You may then either insist or adhere.

§ 481. No equivalent questions on motions to recede, insist, and adhere.

4th. To insist.—You may then either recede or adhere.

5th. To adhere.—You may then either recede or insist.

Consequently the negative of these is not equivalent to a positive vote the other way. It does not raise so necessary an implication as may authorize the Secretary by inference to enter another vote; for two alternatives still remain, either of which may be adopted by the House.

SEC. XXXIX.—THE QUESTION.

§ 482. Putting the question.

The question is to be put first on the affirmative, and then on the negative side.

Rule I, § 5, of the House of Representatives, provides more fully for putting the question.

After the Speaker has put the affirmative part of the question, any Member who has not spoken before to the question may rise and speak before the negative be put; because it is no full question till the negative part be put. *Scob.*, 23; *2 Hats.*, 73.

§ 483. Effect of putting the question in ending debate.

But in small matters, and which are of course, such as receiving petitions, reports, withdrawing motions, reading papers, &c., the Speaker most commonly supposes the consent of the House where no objection

§ 484. Informal putting of the question.

§§ 485, 486.

is expressed, and does not give them the trouble of putting the question formally. *Scob.*, 22; 2 *Hats.*, 79, 2, 87; 5 *Grey*, 129; 9 *Grey*, 301.

SEC. XL.—BILLS, THIRD READING.

To prevent bills from being passed by surprise, the House, by a standing order, directs that they shall not be put on their passage before a fixed hour, naming one at which the house is commonly full. *Hakew.*, 153.

§ 485. Obsolete requirements as to reading and passage of bills.

The usage of the Senate is not to put bills on their passage till noon.

A bill reported and passed to the third reading, cannot on that day be read the third time and passed; because this would be to pass on two readings in the same day.

None of these restrictions is of effect in the modern practice of the House of Representatives. Rule XXI, § 1, permits a bill to be read a third time and passed on the same day, and it is in order to proceed with a bill at any time, unless the absence of a quorum be shown.

At the third reading the Clerk reads the bill and delivers it to the Speaker, who states the title, that it is the third time of reading the bill, and that the question will be whether it shall pass. Formerly the Speaker, or those who prepared a bill, prepared also a breviat or summary statement of its contents, which the Speaker read when he declared the state of the bill, at the several readings. Sometimes, how-

§ 486. Obsolete parliamentary law as to third reading.

ever, he read the bill itself, especially on its passage. *Hakew.*, 136, 137, 153; *Coke*, 22, 115. Latterly, instead of this, he, at the third reading, states the whole contents of the bill verbatim, only, instead of reading the formal parts, "Be it enacted," &c., he states that "preamble recites so and so—the 1st section enacts that, &c.; the 2d section enacts," &c.

But in the Senate of the United States, both of these formalities are dispensed with; the breviatè presenting but an imperfect view of the bill, and being capable of being made to present a false one; and the full statement being a useless waste of time, immediately after a full reading by the Clerk, and especially as every member has a printed copy in his hand.

In the House of Representatives there is no practice justifying the presentation of a breviatèd summary; and the procedure on third reading is definitely prescribed by Rule XXI, § 1.

A bill on the third reading is not to be committed for the matter or body thereof, but to receive some particular clause or proviso, it hath been sometimes suffered, but as a thing very unusual. *Hakew.*, 156. Thus, 27 *El.*, 1584, a bill was committed on the third reading, having been formerly committed on the second, but is declared not usual. *D'Ewes*, 337, col. 2; 414, col. 2.

§ 487. Committal
of a bill on third
reading.

In the House of Representatives it is in order to commit a bill either before or after the engrossment and third reading (V, 5562); and by Rule XVII, § 1, the House has preserved this opportunity to commit even after the previous question has been ordered.

§§ 488-490.

When an essential provision has been omitted, rather than erase the bill and render it suspicious, they add a clause on a separate paper, engrossed and called a rider, which is read and put to the question three times. *Elsynge's Memo.*, 59; 6 *Grey*, 335; 1 *Blackst.*, 183. For examples of riders, see 3 *Hats.*, 121, 122, 124, 156. Every one is at liberty to bring in a rider without asking leave. 10 *Grey*, 52.

This practice is never followed in the House of Representatives.

It is laid down, as a general rule, that amendments proposed at the second reading shall be twice read, and those proposed at the third reading thrice read; as also all amendments from the other House. *Town.*, col. 19, 23, 24, 25, 26, 27, 28.

In the practice of the House of Representatives amendments, whether offered in the House or coming from the other House, do not come under the rule requiring different readings.

It is with great and almost invincible reluctance that amendments are admitted at this reading, which occasion erasures or interlineations. Sometimes a proviso has been cut off from a bill; sometimes erased. 9 *Grey*, 513.

This is the proper stage for filling up blanks; for if filled up before, and now altered by erasure, it would be peculiarly unsafe.

In the House of Representatives bills are amended after the second reading (IV, 3392), and before the engrossment and third reading (V, 5781) but not afterwards.

§ 491. Debate in relation to the third reading.

At this reading the bill is debated afresh, and for the most part is more spoken to at this time than on any of the former readings.

Hakew., 153.

The debate on the question whether it should be read a third time, has discovered to its friends and opponents the arguments on which each side relies, and which of these appear to have influence with the House; they have had time to meet them with new arguments, and to put their old ones into new shapes. The former vote has tried the strength of the first opinion, and furnished grounds to estimate the issue; and the question now offered for its passage is the last occasion which is ever to be offered for carrying or rejecting it.

In the House of Representatives it is usual to debate a bill before and not after the engrossment and third reading, probably because of the frequent use of the previous question, which prevents all debate after it is ordered. When the previous question is not ordered, debate may occur pending the vote on the passage.

§ 492. Putting the question on the passage of a bill.

When the debate is ended, the Speaker, holding the bill in his hand, puts the question for its passage, by saying, "Gentlemen, all you who are of opinion that this bill shall pass, say aye;" and after the answer of the ayes, "All those of the contrary opinion, say no." *Hakew., 154.*

In the House of Representatives the bill is usually in the hands of the Clerk. The Speaker states that "The question is on the passage of the bill," and puts the question in the form prescribed by Rule I, § 5.

§§ 498-495.

§ 498. Bills not altered after their passage.

After the bill is passed, there can be no further alteration of it in any point.

Hakew., 159.

This principle controls the practice of the House of Representatives, except as a bill may be changed after the votes on the passage and engrossment have been reconsidered.

SEC. XLI.—DIVISION OF THE HOUSE.

The affirmative and negative of the question having been both put and answered, the Speaker declares whether the yeas or nays have it by the sound, if he be himself satisfied, and it stands as the judgment of the House. But if he be not himself satisfied which voice is the greater, or if before any other Member comes into the House, or before any new motion made (for it is too late after that), any Member shall arise and declare himself dissatisfied with the Speaker's decision, then the Speaker is to divide the House. *Scob., 24; 2 Hats., 140.*

§ 494. Division of the House after determination by sound.

This practice is provided for in different language by Rule I, § 5.

When the House of Commons is divided, the one party goes forth, and the other remains in the House. This has made it important which go forth and which remain; because the latter gain all the indolent, the indifferent, and inattentive. Their general rule, therefore, is that those who give their vote for the preservation of the orders of the House shall stay in, and those who are for introducing any new matter

§ 495. Parliamentary provisions as to division, not applicable in the House.

or alteration, or proceeding contrary to the established course, are to go out. But this rule is subject to many exceptions and modifications. 2 *Hats.*, 134; 1 *Rush.*, p. 3, fol. 92; *Scob.*, 43, 52; *Co.*, 12, 116; *D' Ewes*, 505, col. 1; *Mem. in Hakew.*, 25, 29; as will appear by the following statement of who go forth:

Petition that it be received (<i>Noes</i> , 9 <i>Grey</i> , 365).....		
Read.....	} Ayes.	
Lie on the table.....		
Rejected after refusal to lie on table.....	} Noes.	
Referred to a committee, or further proceeding.....		Ayes.
Bill, that it be brought in.....	} Ayes.	
Read first or second time.....		
Engrossed or read third time.....		
Proceeding on every other stage.....		
Committed.....		
To Committee of the Whole.....		Noes.
To a select committee.....		Ayes.
Report of bill to lie on table.....		Noes.
Be <i>now</i> read.....		Ayes.
Be taken into consideration three months hence.....		30, P. J. 251.
Amendments to be read a second time.....		Noes.
Clause offered on report of bill be read second time.....		Ayes.
For receiving a clause.....	} 334.	
With amendments be engrossed.....		395.
That a bill be <i>now</i> read a third time.....		Noes. 398.
Receive a rider.....	} Ayes.	260.
Pass.....		259.
Be printed.....		
Committees. That A take the chair.....	} Noes.	291.
To agree to the whole or any part of report.....		
That the House do <i>now</i> resolve into committee.....		
Speaker. That he now leave the chair, after order to go into committee.....		
That he issue warrant for a new writ.....		
Member. That none be absent without leave.....		
Witness. That he be further examined.....	Ayes.	344.
Previous question.....	Noes.	

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Blanks. That they be filled with the largest sum.	} Ayes.
Amendments. That words stand part of.	
Lords. That their amendment be read a second time.	Noes.
Messenger be received.	} Ayes.
Orders of the day to be now read, if before 2 o'clock.	
If after 2 o'clock.	Noes.
Adjournment. Till the next sitting day, if before 4 o'clock. .	Ayes.
If after 4 o'clock.	Noes.
Over a sitting day (unless a previous resolution).	Ayes.
Over the 30th of January.	Noes.
For sitting on Sunday, or any other day not being a sitting} day.	Ayes.

The one party being gone forth, the Speaker names two tellers from the affirmative and two from the negative side, who first count those sitting in the House and report the number to the Speaker. Then they place themselves within the door, two on each side, and count those who went forth as they come in and report the number to the Speaker. *Mem. in Hakew., 26.*

In the House of Representatives the two tellers take their places in the entrance to the center aisle and the affirmative and the negative pass between them to be counted. Thus no question arises from advantage from indifference.

§ 496. Correction
of a vote by tellers
after the report.

A mistake in the report of the tellers may be rectified after the report made.
2 Hats., 145, note.

* * * * *

When it is proposed to take the vote by yeas and nays, the President or Speaker states that "the question is whether, e. g., the bill shall pass—that it is proposed that the

§ 497. Voting by
yeas and nays.

yeas and nays shall be entered on the journal. Those, therefore, who desire it will rise." If he finds and declares that one-fifth have risen, he then states that "those who are of opinion that the bill shall pass are to answer in the affirmative; those of the contrary opinion in the negative." The Clerk then calls over the names alphabetically, notes the yea or nay of each, and gives the list to the President or Speaker, who declares the result. In the Senate if there be an equal division the Secretary calls on the Vice-President and notes his affirmative or negative, which becomes the decision of the House.

In the House of Representatives tellers are sometimes, though rarely, ordered to determine whether one-fifth join in the demand for the yeas and nays (V, 6045). Rule XV, § 1 of the House provides the method of taking the yeas and nays in the modern practice.

In the House of Commons every member must give his vote the one way or the other, *Scob.*,
 § 498. Parliamentary law as to giving of votes. 24, as it is not permitted to anyone to withdraw who is in the House when the question is put, nor is anyone to be told in the division who was not in when the question was put.
2 Hats., 140.

This last position is always true when the vote is by yeas and nays; where the negative as well as affirmative of the question is stated by the President at the same time, and the vote of both sides begins and proceeds *pari passu*. It is true also when the question is put in the usual way, if the negative has also been put; but if it has not, the member entering,

§§ 499, 500.

or any other member may speak, and even propose amendments, by which the debate may be opened again, and the question be greatly deferred. And as some who have answered aye may have been changed by the new arguments, the affirmative must be put over again. If, then, the member entering may, by speaking a few words, occasion a repetition of a question, it would be useless to deny it on his simple call for it.

Rule VIII, § 1, of the House of Representatives requires Members to vote; but no rule excludes from voting those not present at the putting of the question, and this requirement of the parliamentary law is not observed in the House. No attempt is made to prevent Members from withdrawing after a question is put, unless there be a question as to a quorum, when the House proceeds under Rule XV, §§ 2, 4.

While the House is telling, no Member may speak or move out of his place, for if any mistake be suspected it must be told again.
Mem. in Hakew., 26; 2 Hats., 143.

§ 499. Movements
of Members during
voting.

This rule applies in the House of Representatives on a vote by division, where the Speaker counts; but not to a vote by tellers, where the members pass between the tellers, or to a vote by yeas and nays.

If any difficulty arises in point of order during the division, the Speaker is to decide peremptorily, subject to the future censure of the House if irregular. He sometimes permits old experienced Members to assist him with their advice, which they do sitting in their seats, covered, to avoid the appearance of debate; but this

§ 500. Decisions
of points of order
during a division.

can only be with the Speaker's leave, else the division might last several hours. *2 Hats., 143.*

In the House of Representatives any Member advising the Speaker would rise and give advice standing under Rule XIV, § 1.

The voice of the majority decides; for the *lex majoris partis* is the law of all councils, elections, &c., where not otherwise expressly provided. *Hakew., 93.* But if the House be equally divided, *semper presumatur pro negante*; that is, the former law is not to be changed but a majority. *Towns., col. 134.*

The House of Representatives provides also by rule that in all cases of tie vote the question shall be lost.

The House of Representatives, however, requires a two-thirds vote on a motion to suspend the rules (Rule XXVII, § 1) and on a motion to dispense with Calendar Wednesday, and the Constitution of the United States requires two-thirds votes for passing vetoed bills, removing political disabilities, and passing resolutions proposing amendments to the Constitution.

When from counting the House on a division it appears that there is not a quorum, the matter continues exactly in the state in which it was before the division, and must be resumed at that point on any future day. *2 Hats., 126.*

In the House of Representatives the failure of a quorum necessitates the suspension of even the most highly privileged business (IV, 2934), and debate as well (IV, 2935-2949); and there must be a quorum before the House may proceed (IV, 2952, 2953). Even in the closing hours of a Congress business has been stopped by the failure of a quorum (V, 6309).

JEFFERSON'S MANUAL.

§§ 504-506.

1606, May 1, on a question whether a Member having said yea may afterwards sit and change his opinion, a precedent was remembered by the Speaker, of Mr. Morris, attorney of the wards, in *39 Eliz.*, who in like case changed his opinion. *Mem. in Hakew.*, 27.

The House of Representatives is governed in this respect by the practice under Rule XV, § 1.

SEC. XLII.—TITLES.

After the bill has passed, and not before, the title may be amended, and is to be fixed by a question; and the bill is then sent to the other House.

§ 505. Amendments to the title of a bill.

The House of Representatives by Rule XIX embodies this principle with an additional provision as to debate.

SEC. XLIII.—RECONSIDERATION.

1798, Jan. A bill on its second reading being amended, and on the question whether it shall be read a third time negatived, was restored by a decision to reconsider that question. Here the votes of negative and reconsideration, like positive and negative quantities in equation, destroy one another, and are as if they were expunged from the journals. Consequently the bill is open for amendment, just so far as it was the moment preceding the question for the third reading; that is to say, all parts of the bill are open for amendment except those on which votes have been already

§ 506. Early Senate practice as to reconsideration.

taken in its present stage. So, also, it may be recommended.

The rule permitting a reconsideration of a question affixing to it no limitation of time or circumstance, it may be asked whether there is no limitation? If, after the vote, the paper on which it is passed has been parted with, there can be no reconsideration, as if a vote has been for the passage of a bill and the bill has been sent to the other House.* But where the paper remains, as on a bill rejected, when or under what circumstances does it cease to be susceptible of reconsideration? This remains to be settled, unless a sense that the right of reconsideration is a right to waste the time of the House in repeated agitations of the same question, so that it shall never know when a question is done with, should induce them to reform this anomalous proceeding.

The House of Representatives provides for reconsideration by Rule XVIII, § 1.

In Parliament a question once carried can not be questioned again at the same session, but must stand as the judgment of the House. *Towns., col. 67; Mem. in Hakew., 33.* * * *

* * * And a bill once rejected, another of the same substance can not be brought in again the same session. *Hakew., 158; 6 Grey, 392.* But this does not extend to prevent putting the same question in different stages of a bill, because every stage

§ 507. Parliamentary law as to reconsideration.

§ 508. A bill once rejected not to be brought up again at the same session.

§ 509.

of a bill submits the whole and every part of it to the opinion of the House as open for amendment, either by insertion or omission, though the same amendment has been accepted or rejected in a former stage. So in reports of committees, *e. g.*, report of an address, the same question is before the House, and open for free discussion. *Towns.*, col. 26; *2 Hats.*, 98, 100, 101. So orders of the House or instructions to committees may be discharged. So a bill, begun in one House and sent to the other and there rejected, may be renewed again in that other, passed, and sent back. *Ib.*, 92; *3 Hats.*, 161. Or if, instead of being rejected, they read it once and lay it aside or amend it and put it off a month, they may order in another to the same effect, with the same or a different title. *Hakew.*, 97, 98.

In the House of Representatives, with its rule for reconsideration, there is rarely, if ever, an attempt to bring forward a bill once rejected at the same session. An instance occurred in 1856, however (IV, 3384), and on March 9, 1910, the House declined to consider a bill brought forward after a rejection.

Divers expedients are used to correct the effects of this rule, as, by passing an explanatory act, if anything has been omitted or ill expressed, *3 Hats.*, 278, or an act to enforce and make more effectual an act, &c., or to rectify mistakes in an act, &c., or a committee on one bill may be instructed to receive a clause to rectify the mistakes of another. Thus, June 24, 1685, a

§ 509. Expedients
for changing the
effect of bills once
passed.

clause was inserted in a bill for rectifying a mistake committed by a clerk in engrossing a bill of supply. *2 Hats.*, 194, 6. Or the session may be closed for one, two, three, or more days and a new one commenced. But then all matters depending must be finished, or they fall, and are to begin de novo. *2 Hats.*, 94, 98. Or a part of the subject may be taken up by another bill or taken up in a different way. *6 Grey*, 304, 316.

§ 510. Exceptions to the rule against bringing up a matter once rejected.

And in cases of the last magnitude this rule has not been so strictly and verbally observed as to stop indispensable proceedings altogether. *2 Hats.*, 92, 98. Thus when the address on the preliminaries of peace in 1782 had been lost by a majority of one, on account of the importance of the question and smallness of the majority, the same question in substance, though with some words not in the first, and which might change the opinion of some Members, was brought on again and carried, as the motives for it were thought to outweigh the objection of form. *2 Hats.*, 99, 100.

§ 511. Passage of supplementary bills.

A second bill may be passed to continue an act of the same session or to enlarge the time limited for its execution. *2 Hats.*, 95, 98. This is not in contradiction to the first act.

The House of Representatives has by a joint resolution corrected an error in a bill that had gone to the President (IV, 3519).

§§ 512-514.

SEC. XLIV.—BILLS SENT TO THE OTHER HOUSE.

§ 512. Laying on
the table bills from
the other House.

A bill from the other House is sometimes ordered to lie on the table. *2 Hats., 97.*

This principle is recognized in the practice of the House of Representatives, both as to Senate bills (IV, 3418, 3419; V, 5437), and as to House bills returned with Senate amendments (V, 5424, 6201-6203).

§ 513. Requests
for information
from the other
House.

When bills passed in one House and sent to the other are grounded on special facts requiring proof, it is usual, either by message or at a conference, to ask the grounds and evidence, and this evidence, whether arising out of papers or from the examination of witnesses, is immediately communicated. *3 Hats., 48.*

The Houses of Congress transmit with bills accompanying papers, which are returned when the bills pass or at final adjournment (V, 7259, footnote). Sometimes one House has asked, by resolution, for papers from the files of the other (V, 7263, 7264). Testimony is also requested (III, 1855).

SEC. XLV.—AMENDMENTS BETWEEN THE HOUSES.

§ 514. Parliamentary principles as to disagreeing, insisting, and adhering.

When either House, *e. g.*, the House of Commons, send a bill to the other, the other may pass it with amendments. The regular progression in this case is, that the Commons disagree to the amendment; the Lords insist on it; the Commons insist on their disagreement; the Lords adhere to their amendment; the Commons adhere to their disagreement. The term of insisting may be repeated as often as they choose to keep the question open. But the first adherence

by either renders it necessary for the other to recede or adhere also; when the matter is usually suffered to fall. *10 Grey, 148*. Latterly, however, there are instances of their having gone to a second adherence. There must be an absolute conclusion of the subject somewhere, or otherwise transactions between the Houses would become endless. *3 Hats., 268, 270*. The term of insisting, we are told by Sir John Trevor, was then (1679) newly introduced into parliamentary usage by the Lords. *7 Grey, 94*. It was certainly a happy innovation, as it multiplies the opportunities of trying modifications which may bring the Houses to a concurrence. Either House, however, is free to pass over the term of insisting, and to adhere in the first instance; *10 Grey, 146*; but it is not respectful to the other. In the ordinary parliamentary course there are two free conferences, at least, before an adherence. *10 Grey, 147*.

The House of Representatives and the Senate follow the principles set forth in this paragraph of the parliamentary law, and sometimes dispose of differences without resorting to conferences (V, 6165).

Where both Houses insist and neither ask a conference or recede the bill fails (V, 6228). Also when both Houses adhere the bill fails (V, 6163, 6313, 6324, 6325) even though the difference may be over a very slight amendment (V, 6233-6240). In rare instances in Congress there has been immediate adherence on the first disagreement (V, 6303); but this does not preclude the granting of the request of the other House for a conference (V, 6241-6244). Sometimes the House recedes from its disagreement as to certain amendments and adheres as to others (V, 6229). One House having adhered, may at the next stage vote to further adhere (V, 6251). Sometimes also the House recedes from adherence (V, 6252, 6401) or reconsiders its action of adherence (V, 6253); after which it has agreed to the amendment with or without amendment (V, 6253, 6401).

§§ 516-518.

Either House may recede from its amendment and agree to the bill; or recede from their disagreement to the amendment, and agree to the same absolutely, or with an amendment; for here the disagreement and receding destroy one another, and the subject stands as before the disagreement. *Elysngc, 23, 27; 9 Grey, 476.*

§ 516. Parliamentary law as to receding.

In the practice of the two Houses of Congress the motion is to recede from the amendment without at the same time agreeing to the bill, for the bill has already been passed with the amendment, and receding from the amendment leaves the bill passed (V, 6312). One House has receded from its own amendment after the other House had returned it concurred in with an amendment (V, 6226). Where one House has receded from an amendment, it may not at a subsequent stage recall its action in order to form a new basis for a conference (V, 6251). Sometimes one House has receded from its amendment although it had previously insisted and asked a conference which had been agreed to (V, 6319).

§ 517. Practice of the House as to receding from its own amendment to a bill of the other House.

By receding from its disagreement to an amendment of the Senate the House does not thereby agree to it (V, 6215); but the Senate amendment is then open to amendment precisely as before the original disagreement (V, 6212-6214). The stage of disagreement having been reached, the motion to recede and concur takes precedence of the motion to recede and concur with an amendment (V, 6219-6223); but a motion to recede and concur is divisible, and being divided and the House having receded, a motion to amend has precedence of the motion to concur (V, 6209-6211). The motion to recede and concur in a Senate amendment with an amendment takes precedence of a motion to insist further on the House's disagreement to the Senate amendment (V, 6224). It has been held that after the previous question has been moved on a motion to adhere a motion to recede may not be made (V, 6310); but where the previous question has been demanded on a motion to insist, a motion to recede and concur has been admitted (V, 6208, 6321a).

§ 518. Practice of the House as to receding from disagreement to amendment of the other House.

But the House can not recede from or insist on its own amendment, with an amendment; for the same reason that it can not send to the other House an amendment to its own act after it has passed the act. They may modify an amendment from the other House by ingrafting an amendment on it, because they have never assented to it; but they can not amend their own amendment, because they have, on the question, passed it in that form. *9 Grey, 363; 10 Grey, 240.* In Senate, March 29, 1798. Nor where one House has adhered to their amendment, and the other agrees with an amendment, can the first House depart from the form which they have fixed by an adherence.

In the case of a money bill, the Lords' proposed amendments become, by delay, confessedly necessary. The Commons, however, refused them, as infringing on their privilege as to money bills; but they offered themselves to add to the bill a proviso to the same effect, which had no coherence with the Lords' amendments; and urged that it was an expedient warranted by precedent, and not unparliamentary in a case become impracticable, and irremediable in any other way. *3 Hats., 256, 266, 270, 271.* But the Lords refused, and the bill was lost. *1 Chand., 288.* A like case, *1 Chand., 311.* * * *

In the House of Representatives it is a recognized principle that the House may not recede from its own amendments with an amendment (V, 6216-6218).

§§ 520-522.

* * *

§ 520. Text to which both Houses have agreed not to be changed.

So the Commons resolved that it is unparliamentary to strike out, at a conference, anything in a bill which hath been agreed and passed by both Houses.
6 Grey, 274; 1 Chand., 312.

The practice of the two Houses has confirmed this principle of the parliamentary law and established the rule that managers of a conference may not change the text to which both Houses have agreed (V, 6417, 6418, 6420), and either House alone may not, by instructions, empower the managers to make such change (V, 6388). In the earlier practice, when it was necessary to change the text already agreed to, the managers appended a supplementary paragraph to their report, and this was agreed to by unanimous consent in the two Houses (V, 6433-6436); but in the later practice it has been found a more effective method for the two Houses to agree to a concurrent resolution giving to the managers the necessary powers (V, 6437-6440). In the House such a resolution would be presented by unanimous consent, under suspension of the rules, or on report from the Committee on Rules.

The further principle has been established in practice of the House of Representatives that it may not, even by unanimous consent (V, 6179), change in the slightest particular (V, 6181) the text to which both Houses have agreed (V, 6180). And this prohibition extends, also, to a case wherein it is proposed to add a new section at the end of a bill which has passed both Houses (V, 6182).

§ 521. Precedence of motion to amend over motion to agree or disagree.

A motion to amend an amendment from the other House takes precedence of a motion to agree or disagree.

This is the rule of the two Houses of Congress (V, 6164, 6169-6171).

§ 522. Degree of amendments between the Houses.

A bill originating in one House is passed by the other with an amendment.
The originating House agrees to their amendment with an amendment. The other may agree to their amendment with an amendment, that being only in the 2d and not the 3d degree; for, as to the amending House, the first

amendment with which they passed the bill is a part of its text. It is the only text they have agreed to. The amendment to that text by the originating House therefore is only in the 1st degree, and the amendment to that again by the amending House is only in the 2d, to wit, an amendment to an amendment, and so admissible. Just so, when, on a bill from the originating House, the other, at its second reading, makes an amendment; on the third reading this amendment is become the text of the bill, and if an amendment to it be moved an amendment to that amendment may also be moved, as being only in the 2d degree.

This principle is followed in the practice of the House of Representatives (V, 6167, 6177, 6178).

SEC. XLVI.—CONFERENCES.

It is on the occasion of amendments between the Houses that conferences are usually asked; but they may be asked in all cases of difference of opinion between the two Houses on matters depending between them. The request of a conference, however, must always be by the House which is possessed of the papers. *3 Hats.*, 31; *1 Grey*, 425.

The House of Representatives follows the principles set forth in this paragraph of the parliamentary law. A conference may be asked on only a portion of the amendments in disagreement, leaving the differences as to the remainder to be settled by the action of the two Houses themselves (V, 6401). In very rare instances conferences have been asked by one House after the other has absolutely rejected a main proposition

§ 523. Parliamentary law as to asking conferences.

JEFFERSON'S MANUAL.

§§ 524-527.

(IV, 3442; V, 6258). A difference over an amendment to a proposed constitutional amendment may be committed to a conference (V, 7037).

While conferences between the two Houses of Congress are usually held over differences as to amendments to bills, occasionally differences arise as to the respective prerogatives of the Houses (II, 1485-1495) or as to matters of procedure (V, 6401), as in impeachment proceedings (III, 2304), which are referred to conference. And in early and exceptional instances conferences have been asked as to legislative matters when no propositions relating thereto were pending (V, 6255-6257).

In very rare cases, also, the Houses interchange views and come to conclusions by means of select committees appointed on the part of each House (VI, 3). Thus, in 1821, a joint committee was chosen to consider and report to the two Houses whether or not it was expedient to consider and report whether or not Missouri should be admitted to the Union (IV, 4471), and in 1877 similar committees were appointed to devise a method for counting the electoral vote (III, 1953).

The parliamentary law provides that the request for a conference must always be by the House which is possessed of the papers. § 526. Requests for conferences. It was formerly the more regular practice for the House disagreeing to amendments of the other to leave the asking of a conference to that other House if it should decide to insist (V, 6278-6285, 6324); but it is so usual in the later practice for the House disagreeing to an amendment of the other to ask a conference that an omission to do so has even raised a question (V, 6273). Yet it can not be said that the practice requires a request for a conference to be made by the House disagreeing to the amendments of the other (V, 6274-6277). One House having asked a conference at one session, the other House may agree to the conference at the next session of the same Congress (V, 6286).

In rare instances one House has declined the request of the other for a conference (V, 6313-6315), sometimes accompanying it by adherence (V, 6313, 6315). In one instance, where the Senate declined a conference, it transmitted, by message, its reasons for so doing (V, 6313). Sometimes, also, one House disregards the request of the other for a conference and recedes from its disagreement, thereby rendering a conference unnecessary (V, 6316-6318). And in one case, where one House had asked a conference to which the other had assented, the asking House receded before the conference took place (V, 6319). Also, a bill returned to the House with a request for a conference has been postponed indefinitely (V, 6199).

The motion to ask a conference is distinct from motions to agree or disagree to amendments of the other House (V, 6268) and is not in order until the House has disposed of the preferential motions to agree, recede, or insist (V, 6269, 6270). Where a conference results in disagreement, a motion for a new conference is privileged (V, 6586). Where a motion to request a conference is rejected, it may not be repeated at the same stage, even though a recess of Congress may have intervened (V, 6325). Sometimes disagreements are voted on by the House and conferences asked through the medium of special orders (IV, 3242-3249).

While usual, it is not essential that one House, in asking a conference, transmit the names of its managers at the same time (V, 6405). The managers, properly so called (V, 6335), constitute practically two distinct committees, each of which acts by a majority (V, 6334). They are usually three in number from each House (V, 6336); but in the absence of joint rules each House may appoint whatever numbers it sees fit (V, 6328-6330, 6405), the Speaker in the House frequently fixing the number (V, 6336). Instances have occurred where one House has appointed three managers and the other a greater number (V, 6331-6333). The Speaker appoints the managers in the House (Rule X, § 2), selecting them so as to represent the attitude of the majority and minority of the House on the disagreements in issue (V, 6336-6338); and while it is usual to represent the party divisions of the House the representation of opinions as to the pending differences is rather the more important consideration (V, 6339, 6340). In appointing managers the Speaker usually consults the Member in charge of the bill (V, 6327), and selects the managers from the committee which reported the bill (V, 6336); but where the committee which has charge holds to an attitude to which the House disagrees the managers have been appointed to reflect the views of the House (V, 6369). While the major part of the managers represent the majority view of the House, while a minority manager represents the minority, in one instance, when the prerogatives of the House were involved, all the managers were selected to represent the majority opinion (V, 6338).

Where there were several conferences on a bill, it was the early practice to change the managers at each conference (V, 6288-6291, 6324), and so fixed was this practice that their reappointment had a special significance, indicating an unyielding temper (V, 6352-6368); but in the later practice it is the rule to reappoint managers (V, 6341-6344) unless a change be necessary to enable the sentiment of the House to be represented (V, 6369).

§ 528. Motions to request conferences.

§ 529. Managers of conferences.

§ 530. Reappointment of, at second and subsequent conferences.

§§ 531-533.

Managers of a conference are excused from service only by authority of the House (V, 6373-6376); but the absence of a manager causes a vacancy which the Speaker fills by appointment (V, 6372). Where one House makes a change in its managers, it informs the other House, by message (V, 6377, 6378). According to the later practice the powers of managers who have not reported do not expire by reason of the termination of a session of Congress, unless it be the last session (V, 6260-6262).

Conferences may be either simple or free. At a conference simply written reasons are prepared by the House asking it, and they are read and delivered, without debate, to the managers of the other House at the conference, but are not then to be answered. 4 *Grey*, 144. The other House then, if satisfied, vote the reasons satisfactory, or say nothing; if not satisfied, they resolve them not satisfactory and ask a conference on the subject of the last conference, where they read and deliver, in like manner, written answers to those reasons. 3 *Grey*, 183. They are meant chiefly to record the justification of each House to the nation at large and to posterity and in proof that the miscarriage of a necessary measure is not imputable to them. 3 *Grey*, 255. At free conferences the managers discuss, viva voce and freely, and interchange propositions for such modifications as may be made in a parliamentary way, and may bring the sense of the two Houses together. * * *

This provision of the parliamentary law bears little relation to the modern practice of the two Houses of Congress, and that practice has evolved a new definition: "A free conference is that which leaves the committee of conference entirely free to pass upon any subject where the two branches have disagreed in their votes, not, however, including any action

§ 531. Vacancies,
etc., in managers
of conferences.

§ 532. Parliamen-
tary law as to
free and simple
conferences.

§ 533. Free and
simple confer-
ences in modern
practice.

upon any subject where there has been a concurrent vote of both branches. A simple conference—perhaps it should more properly be termed a strict or a specific conference, though the parliamentary term is “simple”—is that which confines the committee of conference to the specific instructions of the body appointing it” (V, 6403). And where the House had asked a free conference it was held not in order to instruct the managers (V, 6384). But it is very rare for the House in asking a conference to specify whether it shall be free or simple.

In their practice as to the instruction of managers of a conference the House of Representatives and the Senate do not agree. Only in rare instances has the Senate instructed (V, 6398), and these instances are at variance with its declaration, made after full consideration, that managers may not be instructed (V, 6397). And where the House has instructed its managers, the Senate has declined to participate and asked a free conference (V, 6402–6404). In the later practice the House does not inform the Senate when it instructs its managers (V, 6399), the Senate having objected to the transmittal of instructions by message (V, 6400, 6401). In one instance wherein the Senate learned indirectly that the House had instructed its managers it declared that the conference should be full and free, and instructed its own managers to withdraw if they should find the freedom of the conference impaired (V, 6406). But the House of Representatives holds to the opinion that the House may instruct its managers (V, 6379–6382), although the propriety of doing so at a first conference is open to serious doubt (V, 6388, footnote). And in rare instances where a free conference is asked instruction is not in order (V, 6384). At a new conference the instructions of a former conference are not in force (V, 6383). And instructions may not direct the managers to do that which they might not otherwise do (V, 6386, 6387), as to effect a change in part of a bill not in disagreement (V, 6391–6394), or change the text to which both Houses have agreed (V, 6388). Although managers may disregard instructions, their report may not for that reason be ruled out of order (V, 6395). The motion to instruct managers should be offered after the vote to ask for or agree to a conference and before the managers are appointed (V, 6379–6382). The motion to instruct may be amended unless the previous question be ordered (V, 6525).

§§ 535-538.

* * *

§ 535. Parliamentary law as to reports of managers of a conference.

And each party reports in writing to their respective Houses the substance of what is said on both sides, and it is entered in their journals. *9 Grey, 220; 3 Hats., 280.* This report can not be amended or altered, as that of a committee may be. *Journal Senate, May 24, 1796.*

In the two Houses of Congress conference reports were originally merely suggestions for action and were neither identical in the two Houses nor acted on as a whole (V, 6468-6471). In the House of Representatives, Rule XXVIII, provides that conference reports may be received at any time, except when the Journal is being read, while the roll is being called or the House is dividing. The early reports were not signed by the managers (IV, 3905); but in the later practice the signatures of the majority of the managers of each House is required (V, 6497-6502). Sometimes a manager indorses the report with a conditional approval or dissent (V, 6489-6496, 6538). The name of an absent manager may not be affixed, but the two Houses by concurrent action may authorize him to sign the report after it has been acted on (V, 6488). The minority portion of the managers of a conference have no authority to make either a written or verbal report concerning the conference (V, 6406). In the later practice reports of managers are identical, and made in duplicate for the two Houses, the House managers signing first the report for their House and the Senate managers signing the other report first (V, 6323, 6426, 6499, 6500, 6504). Under certain circumstances managers may report an entirely new bill on a subject in disagreement, but this bill is acted on as part of the report (V, 6465-6467).

Managers may report an agreement as to a portion of the amendments in disagreement, leaving the remainder to be disposed of by subsequent action (V, 6460-6464).

§ 537. Partial conference reports.

Where managers of a conference are unable to agree, or where a report is disagreed to in either House, another conference is usually asked (V, 6288-6291). When managers report that they have been unable to agree, the report is not acted on by the House of Representatives (V, 6562). In the earlier practice reports of inability to agree were made verbally or by unsigned written

§ 538. Reports of inability to agree.

reports (V, 6563-6567); but in later practice they are written, in identical form, and signed by the managers of the two Houses (V, 6568, 6569).

The managers of a conference must confine themselves to the differences committed to them (V, 6417, 6418), and may not include subjects not within the disagreements (V, 6407, 6408), even though germane to a question in issue (V, 6419). But they may perfect amendments committed to them if they do not in so doing go beyond the differences (V, 6409-6413). Thus, where an amendment providing an appropriation to construct a road had been disagreed to, it was held in order to report a provision to provide for a survey for the road (V, 6425). Managers may not change the text to which both Houses have agreed (V, 6417, 6418, 6420, 6433-6436). But where the amendment in issue strikes out all of the bill after the enacting clause and substitutes a new text, the managers have the whole subject before them and may exercise a broad discretion as to details (V, 6424) and may even report an entirely new bill on the subject (V, 6421-6423). Speaker Clark, 62d Cong., first sess., p. 4066, Aug. 14, 1911.

In the House of Representatives, in the later practice, the Speaker may rule out a conference report if it be shown that the managers have exceeded their authority (V, 6409, 6410, 6414-6416). In the Senate the Chair does not rule out conference reports; but the Senate itself expresses its opinion on the vote to agree to the report (V, 6426-6432). In the House points of order against reports are made or reserved after the report is read and before the reading of the statement (V, 6424, 6441), or consideration begins (V, 6903-6905), or the report has been agreed to (V, 6442).

Before managers of a conference may report the other House must be notified of their appointment and a meeting must be held (V, 6458). Conferences are generally held in the Senate portion of the Capitol, and with closed doors, although in rare instances Members and others have been admitted to make arguments (V, 6254, footnote, 6263). Rarely, also, papers in the nature of petitions have been referred to managers (V, 6263). The managers of the two Houses vote separately (V, 6336).

The report of the managers of a conference goes first to one House and then to the other, neither House acting until it is in possession of the papers, which means the original bill and amendments, as well as the report (V, 6322, 6518-6522, 6586). The report must be acted on as a whole, being agreed to or disagreed to as an entirety (V, 6472-6480, 6530-6533); and until the report has been acted on no motion to deal with the individual amendments is in order (V, 6323, 6389, 6390). While ordinary reports are agreed to by

§§ 543-545.

majority vote, a two-thirds vote is required on a report relating to a constitutional amendment (V, 7036). In a case wherein a report provided that the House recede from an amendment, which was the only matter in disagreement, and the House agreed to the report, the presiding officers signed the bill, although the Senate had not acted on the report (V, 6587). A conference report being made up but not acted on at the expiration of a Congress, the bill is lost (V, 6309). One House has, by message, reminded the other of its neglect to act on a conference report; but this was an occasion of criticism (V, 6309).

When a conference report is presented, the question on agreeing is regarded as pending (V, 6517), and as the negative of it is equivalent to disagreement, the motion to disagree is not admitted (II, 1473). The reading of the amendments to which the report relates is not in order during its consideration (V, 5298). The report may not be amended on motion made in either House alone (V, 6534, 6535), but amendment is sometimes made by concurrent action of the two Houses (V, 6536, 6537). A motion to refer to a standing committee (V, 6558) or to lay on the table is not entertained in the House (V, 6538-6544); and a conference report may not be sent to Committee of the Whole on suggestion that it contains matter ordinarily requiring consideration in that committee (V, 6559-6561). It is in order on motion to recommit a conference report if the other body, by action on the report, have not discharged their managers (V, 6545-6553, 6609), and by concurrent action of the two Houses a report has been recommitted after one House had acted on it, but such a proposition would not be privileged in the House (V, 6554-6557).

When either House disagrees to a conference report the matter is left in the position it was in before the conference was asked (V, 6525), and the amendments in disagreement come up for further action (II, 1473), but do not return to the state they were in before disagreement, so that they may be required to go to Committee of the Whole (V, 6589).

A conference may be asked, before the House asking it has come to a resolution of disagreement, insisting or adhering. 3 *Hats.*, 269, 341. In which case the papers are not left with the other conferees, but are brought back to be the foundation of the vote to be given. And this is the most reasonable

§ 543. Motions in order during action on a conference report.

§ 544. Effect of disagreement to a conference report.

§ 545. Custody of papers when a conference is asked before disagreement.

and respectful proceeding; for, as was urged by the Lords on a particular occasion, "it is held vain, and below the wisdom of Parliament, to reason or argue against fixed resolutions, and upon terms of impossibility to persuade." *3 Hats.*, 226. * * *

In the Houses of Congress conferences are sometimes asked before a disagreement, and while the rule as to retention of the papers undoubtedly holds good, neglect to observe it has not been questioned (V, 6585).

* * * So the Commons say, "an adherence is never delivered at a free conference, which implies debate." *10 Grey*, 137. And on another occasion the Lords made it an objection that the Commons had asked a free conference after they had made resolutions of adhering. It was then affirmed, however, on the part of the Commons that nothing was more parliamentary than to proceed with free conferences after adhering, *3 Hats.*, 269, and we do in fact see instances of conference, or of free conference, asked after the resolution of disagreeing, *3 Hats.*, 251, 253, 260, 286, 291, 316, 349; of insisting, *ib.*, 280, 296, 299, 319, 322, 355; of adhering, 269, 270, 283, 300; and even of a second or final adherence. *3 Hats.*, 270. * * *

§ 546. Relations of adherence and conference under the parliamentary law.

The two Houses not observing the parliamentary distinctions as to free and other conferences, their practice in case of adherence is also different. Conferences are not asked after an adherence by both Houses, but have often been asked and granted where only one House has adhered (V, 6241-6244). A vote to adhere may not be accompanied by a request for a conference (V, 6303), as the House that votes to adhere does not ask a conference (V, 6304-6308). The request for a conference in such a case is properly accompanied by a motion

§ 547. Relations of adherence and conference under the practice of the two Houses of Congress.

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§§ 548-550.

to insist (V, 6308). And the House that has adhered may insist on its adherence when it agrees to the conference (V, 6325), or it may recede from its adherence and agree to the conference (V, 6251). But it is not considered necessary either to recede or insist before agreeing to the conference (V, 6242, 6244, 6310, 6311).

* * *

And in all cases of conference asked after a

§ 548. Custody of the papers after an effective conference.

vote of disagreement, &c., the conferees of the House asking it are to leave the papers with the conferees of the other; and in one case where they refused to receive them they were left on the table in the conference chamber. *Ib.*, 271, 317, 323, 354; 10 *Grey*, 146.

This principle of the parliamentary law is recognized as of effect in the two Houses of Congress, and is always followed in cases wherein the managers of the conference come to an agreement on which a report may be based. If conferees of House agreeing to conference surrender papers to House asking conference, report can be received first by House asking the conference. (Speaker Clark, 62d Cong., 1st sess., Cong. Rec., p. 4028.) But where a conference breaks up without reaching any agreement the managers for the House which asked the conference, who have the papers by right, are justified in retaining them and carrying them back to the House (IV, 3905 footnote, V, 6246, 6254, 6571-6584). And in one case wherein under such circumstances the papers were taken back to the Senate, which was the body agreeing to the conference, the Senate after consideration sent them to the House, since it seemed proper for the asking House to take the first action (V, 6573). But sometimes managers have brought the papers to the agreeing House without question (V, 6239, footnote).

After a free conference the usage is to proceed with.

§ 550. Free or instructed conferences. free conferences and not to return again to a conference. 3 *Hats.*, 270; 9 *Grey*, 229.

After a conference denied a free conference may be asked. 1 *Grey*, 45.

The House of Representatives instructs its managers whenever it sees fit, without regard to whether or not the preceding conference has been free or instructed.

When a conference is asked, the subject of it must be expressed or the conference not agreed to. *Ord. H. Com.*, 89; 1 *Grey*, 425; 7 *Grey*, 31. They are sometimes asked to inquire concerning an offense or default of a member of the other House. 6 *Grey*, 181; 1 *Chand.*, 304. Or the failure of the other House to present to the King a bill passed by both Houses. 8 *Grey*, 302. Or on information received and relating to the safety of the nation. 10 *Grey*, 171. Or when the methods of Parliament are thought by the one House to have been departed from by the other a conference is asked to come to a right understanding thereon. 10 *Grey*, 148. So when an unparliamentary message has been sent, instead of answering it they ask a conference. 3 *Grey*, 155. Formerly an address or articles of impeachment or a bill, with amendments, or a vote of the House, or concurrence in a vote, or a message from the King were sometimes communicated by way of conference. 6 *Grey*, 128, 300, 387; 7 *Grey*, 80; 8 *Grey*, 210, 255; 1 *Torbuck's Deb.*, 278; 10 *Grey*, 293; 1 *Chandler*, 49, 287. But this is not the modern practice. 8 *Grey*, 255.

§ 552. Obsolete provision as to conference on first reading.

A conference has been asked after the first reading of a bill. 1 *Grey*, 194. This is a singular instance.

The House of Representatives has no procedure conforming to this provision.

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SEC. XLVII.—MESSAGES.

§ 553. Messages sent only when both Houses are sitting.

Messages between the Houses are to be sent only while both Houses are sitting. *3 Hats., 15. * * **

In the latest practice of the House of Representatives the parliamentary rule that messages are to be sent only when both Houses are sitting has been observed (V, 6603, 6604).

§ 554. Messages received during debate.

* * * They are received during a debate without adjourning the debate. *3 Hats., 22.*

In the House of Representatives messages are received during debate, the Member having the floor yielding on request of the Speaker.

House receives message when Senate not in session. (Speaker Clark, June 13, 1911, 62d Cong., first sess., Cong. Rec. p. 1995.)

§ 555. Reception of messages during voting, in absence of a quorum, etc.

In Senate the messengers are introduced in any state of business, except: 1. While a question is being put. 2. While the yeas and nays are being called. 3. While the ballots are being counted. The first case is short; the second and third are cases where any interruption might occasion errors difficult to be corrected. So arranged June 15, 1798.

In the House of Representatives messages are not received while a question is being put, during a division by rising vote, or during a vote by tellers; but they are received during the call of the yeas and nays, during consideration of a question of privilege (V, 6640-6642), during a call of the House (V, 6600, 6650), and before the organization of the House (V, 6647-6649). But the Speaker exercises his discretion about interrupting the pending business (V, 6602).

In the House of Representatives, as in Parliament, if the House be in committee when a messenger attends, the Speaker takes the chair to receive the message, and then quits it to return into committee, without any question or interruption. *4 Grey, 226.*

§ 556. Informal rising of Committee of the Whole to receive a message.

Messengers are not saluted by the Members, but by the Speaker for the House. *2 Grey, 253, 274.*

§ 557. Salutation of messengers by the Speaker.

The practice of the House of Representatives as to reception of messages is founded on this paragraph of the parliamentary law and on the former joint rules (V, 6591-6595). The Speaker, with a slight inclination, addresses the messenger, by his title, after the messenger, with an inclination, has addressed "Mr. Speaker" (V, 6591).

If messengers commit an error in delivering their message, they may be admitted or called in to correct their message. *4 Grey, 41.*

§ 558. Correction and return of messages.

Accordingly, March 13, 1800, the Senate having made two amendments to a bill from the House of Representatives, their Secretary, by mistake, delivered one only, which being inadmissible by itself, that House disagreed, and notified the Senate of their disagreement. This produced a discovery of the mistake. The Secretary was sent to the other House to correct his mistake, the correction was received, and the two amendments acted on *de novo*.

The request of the Senate that its Secretary be allowed to correct an error in a message was granted by order of the House (V, 6605), and in a similar case, when the House directed its clerk to correct an error in a

§§ 559-561.

message to the Senate, the Senate agreed to the correction (V, 6607). In the House a proposition to correct an error in a message to the Senate is received as a question of privilege (III, 2613). One House sometimes asks of the other the return of a message (V, 6609-6611).

As soon as the messenger who has brought bills from the other House has retired, the Speaker holds the bills in his hand, and acquaints the House "that the other House have by their messenger sent certain bills," and then reads their titles, and delivers them to the Clerk to be safely kept till they shall be called for to be read. *Hakew., 178.*

§ 559. Disposal of messages after reception.

In the House of Representatives the message goes to the Speaker's table, but the Speaker does not acquaint the House, as they have already heard the message. From the Speaker's table messages are disposed of under Rule XXIV, § 2.

It is not the usage for one House to inform the other by what numbers a bill is passed. 10 *Grey, 150.* Yet they have sometimes recommended a bill, as of great importance, to the consideration of the House to which it is sent. 3 *Hats., 25.* * * *

§ 560. Information by message as to bills passed.

The Houses of Congress do not communicate by what numbers a bill is passed, or otherwise recommend their bills.

* * * Nor when they have rejected a bill from the other House, do they give notice of it; but it passes sub silentio, to prevent unbecoming altercations. 1 *Blackst., 183.*

§ 561. Information by message as to rejection of bills.

But in Congress the rejection is notified by message to the House in which the bill originated.

In the two Houses of Congress the rejection of a bill is notified to the House in which the bill originated, as in the days of Jefferson, although the joint rule requiring it has disappeared (IV, 3422; V, 6601). And in a case wherein the House had stricken out the enacting words of a Senate bill, the Senate was notified that the bill had been rejected (IV, 3423).

A question is never asked by the one House of the other by way of message, but only at a conference; for this is an interrogatory, not a message. *3 Grey, 151, 181.*

§ 562. Questions asked by conference, not by message.

In 1798 the House of Representatives asked of the Senate a question by way of conference, but this appears to be the only instance (V, 6256).

When a bill is sent by one House to the other, and is neglected, they may send a message to remind them of it. *3 Hats., 25; 5 Grey, 154.* But if it be mere inattention, it is better to have it done informally by communication between the Speakers or Members of the two Houses.

§ 563. Messages as to neglected bills.

It does not appear that either House of Congress has reminded the other of a neglected bill.

Where the subject of a message is of a nature that it can properly be communicated to both Houses of Parliament, it is expected that this communication should be made to both on the same day. But where a message was accompanied with an original declaration, signed by the party to which the message referred, its being sent to one House was not noticed

§ 564. Messages from the President to the two Houses.

§§ 565.

by the other, because the declaration being original, could not possibly be sent to both Houses at the same time. *2 Hats.*, 260, 261, 262.

The King having sent original letters to the Commons afterward desires they may be returned, that he may communicate them to the Lords. *1 Chandler*, 303.

A message of the President of the United States is usually communicated to both Houses on the same day when its nature permits (V, 6590); but an original document accompanying can, of course, be sent to but one House (V, 6616, 6617). The President having by inadvertence included certain papers in a message, was allowed to withdraw them (V, 6651).^a

SEC. XLVIII.—ASSENT.

The House which has received a bill and passed it may present it for the King's assent, and ought to do it, though they have not by message notified to the other their passage of it. Yet the notifying by message is a form which ought to be observed between the two Houses from motives of respect and good understanding. *2 Hats.*, 242. Were the bill to be withheld from being presented to the King, it would be an infringement of the rules of Parliament. *Ib.*

§ 565. Parliamentary law as to presenting a bill for the King's assent.

In the House of Representatives it was held that where there had been no unreasonable delay in transmitting an enrolled bill to the President, a resolution relating thereto did not present a question of privilege (III, 2601).

^a In House of Representatives, roll call is suspended at the discretion of the Speaker to receive messages from the President.

When a bill has passed both Houses of Congress, the House last acting on it notifies its passage to the other, and delivers the bill to the Joint Committee of Enrollment, who sees that it is truly enrolled in parchment. When the bill is enrolled it is not to be written in paragraphs, but solidly, and all of a piece, that the blanks between the paragraphs may not give room for forgery. *9 Grey, 143.* * * *

Formerly the enrollment in the House of Representatives and the Senate was in writing (IV, 3436, 3437); but in 1893 the two Houses, by concurrent resolution, provided that bills should be enrolled on parchment by printing instead of by writing, and also that the engrossment of bills prior to sending them to the other House for action should be in printing (IV, 3433), and in 1895 this concurrent resolution was approved by statute (IV, 3435). In the last six days of a session of Congress the two Houses, by concurrent resolution, may permit the enrolling and engrossing to be done by hand (IV, 3435, 3438). Only in a very exceptional case have the two Houses waived the requirement that bills shall be enrolled (IV, 3442). The enrolling clerk should make no change, however unimportant, in the text of a bill to which the House has agreed (III, 2598); but the two Houses may by concurrent resolution authorize the correction of an error when enrollment is made (IV, 3446-3450), and this seems a better practice than earlier methods by authority of the Committee on Enrolled Bills (IV, 3444, 3445).

* * * It is then put into the hands of the Clerk of the House of Representatives to have it signed by the Speaker. The Clerk then brings it by way of message to the Senate to be signed by their President. The Secretary of the Senate returns it to the Committee of Enrollment, who present it to the President of the United States. * * *

§ 566. Parliamentary law as to enrollment of bills.

§ 567. Practice of the two Houses of Congress as to enrollment of bills.

§ 568. Signing of enrolled bills for presentation to the President.

§§ 569-571.

The practice of the two Houses of Congress for the signing of enrolled bills was formerly governed by joint rules, and has continued since those rules were abrogated in 1876 (IV, 3430). The bills are signed first by the Speaker, then by the President of the Senate (IV, 3429). By unanimous consent where errors are found in enrolled bills that have been signed, the two Houses by concurrent action may authorize the cancellation of the signatures and a reenrollment (IV, 3453-3459), and in the same way the signatures may be cancelled on a bill prematurely enrolled (IV, 3454).

A Speaker pro tempore elected by the House (II, 1401) or whose designation has received the approval of the House (II, 1404), signs enrolled bills; but a Member merely called to the chair during the day (II, 1399, 1400), or designated in writings by the Speaker, does not exercise this function (II, 1401). The Senate, by rule, has empowered a presiding officer by written designation to sign enrolled bills (II, 1403).

In early days a joint committee took enrolled bills to the President (IV, 3432); but in the later practice the chairman of the committee for each House presents the bills from his House, and submits from his committee daily a report of the bills presented for entry in the Journal (IV, 3431).

Enrolled bills pending at the close of a session have, at the next session of the same Congress, been ordered to be treated as if no adjournment had taken place (IV, 3487, 3488). And enrolled bills signed by the presiding officers at one session have been sent to the President and approved at the next session of the same Congress (IV, 3486).

SEC. XLIX.—JOURNALS.

* * * * *

If a question is interrupted by a vote to adjourn, or to proceed to the orders of the day, the original question is never printed in the journal, it never having been a vote, nor introductory to any vote; but when suppressed by the previous question, the first question must be stated, in order to introduce and make intelligible the second. *2 Hats., 83.*

§ 571. Obsolete provisions as to entry of motions in the Journal.

This provision of the parliamentary law is superseded by Rule XVI, § 1.

So also when a question is postponed, adjourned, or laid on the table, the original question, though not yet a vote, must be expressed in the journals, because it makes part of the vote of postponement, adjourning, or laying it on the table.

§ 572. Journal entries of questions postponed, or laid on the table.

In the House of Representatives a question is not adjourned, except in the sense that it may be left to go over as unfinished business by reason of a vote to adjourn.

Where amendments are made to a question, those amendments are not printed in the journals, separated from the question; but only the question as finally agreed to by the House. The rule of entering in the journals only what the House has agreed to, is founded in great prudence and good sense, as there may be many questions proposed which it may be improper to publish to the world in the form in which they are made. *2 Hats., 85.*

In the practice of the House of Representatives a motion to amend is entered on the Journal as any other motion, under Rule XVI, § 1.

* * * * *

§ 574. Entry of votes in Journal of the House of Commons.

The first order for printing the votes of the House of Commons was October 30, 1685. *1 Chandler, 387.*

Some judges have been of opinion that the journals of the House of Commons are no records, but only remembrances. But this is not law. *Hob., 110, 111; Lex. Parl., 114, 115; Jour. H. C., Mar. 17, 1592;*

§ 575. The Journal as an official record.

§ 576.

Hale, Parl., 105. For the Lords in their House have power of judicature, the Commons in their House have power of judicature, and both Houses together have power of judicature; and the book of the Clerk of the House of Commons is a record, as is affirmed by act of Parl., *6 H. 8, c. 16; 4 Inst., 23, 24;* and every member of the House of Commons hath a judicial place. *4 Inst., 15.* As records they are open to every person, and a printed vote of either House is sufficient ground for the other to notice it. Either may appoint a committee to inspect the journals of the other, and report what has been done by the other in any particular case. *2 Hats., 261; 3 Hats., 27-30.* Every member has a right to see the journals and to take and publish votes from them. Being a record, every one may see and publish them. *6 Grey, 118, 119.*

The Journal of the House of Representatives is the official record of the proceedings of the House (IV, 2727), and certified copies are admitted as evidence in the courts of the United States (IV, 2810). A Senate committee concluded that the Journal entries of a legislative body were conclusive as to all the proceedings had, and might not be contradicted by ex parte evidence (I, 563).

On information of a misentry or omission of an entry in the journal, a committee may be appointed to examine and rectify it, and report it to the House. *2 Hats., 194, 195.*

§ 576. Correction
of the Journal
through a
committee.

SEC. L.—ADJOURNMENT.

The two Houses of Parliament have the sole, separate, and independent power of adjourning each their respective Houses. The King has no authority to adjourn them; he can only signify his desire, and it is in the wisdom and prudence of either House to comply with his requisition, or not, as they see fitting. *2 Hats.*, 232; *1 Blackst.*, 186; *5 Grey*, 122.

§ 577. Parliamentary law as to adjournment of the Commons and Lords.

A motion to adjourn, simply, cannot be amended, as by adding "to a particular day;" but must be put simply "that this House do now adjourn;" and if carried in the affirmative, it is adjourned to the next sitting day, unless it has come to a previous resolution, "that at its rising it will adjourn to a particular day," and then the House is adjourned to that day. *2 Hats.*, 82.

§ 578. Motion to adjourn not to be amended.

This rule is of effect in the modern practice of the House of Representatives (Rule XVI, § 4).

Where it is convenient that the business of the House be suspended for a short time, as for a conference presently to be held, &c., it adjourns during pleasure; *2 Hats.*, 305; or for a quarter of an hour. *4 Grey*, 331.

§ 579. Motion for a recess.

An adjournment during pleasure is effected in the House of Representatives by a motion for a recess. A recess may not be taken by less than a quorum (IV, 2958-2960), and consequently the motion for it is not in order

§§ 580, 581.

in the absence of a quorum (IV, 2955-2957). When the hour previously fixed for a recess arrives, the Chair declares the House in recess even in the midst of a division or when a quorum is not present (V, 6665, 6666); but a roll call is not in this way interrupted (V, 6054, 6055). Where a special order requires a recess at a certain hour of a certain day, the recess is not taken if the encroachment of a prior legislative day prevents the existence of the said certain day as a legislative day (IV, 3192). And an adjournment at a time prior to the hour fixed for a recess vacates the recess (IV, 3283). A motion for a recess must, when entertained, be voted on, even though the taking of the vote may have been prevented until after the hour specified for the conclusion of the proposed recess (V, 6667). A Committee of the Whole takes a recess only by permission of the House (V, 6669-6671). The motion for a recess is not privileged (V, 5301, 5302, 6740) against a demand that business proceed in the regular order (V, 6663).^a

If a question be put for adjournment, it is no adjournment till the Speaker pronounces it. *5 Grey, 137*. And from courtesy and respect, no member leaves his place till the Speaker has passed on.

§ 580. Adjournment pronounced by the Speaker.

SEC. LI.—A SESSION.

Parliament have three modes of separation, to wit: by adjournment, by prorogation or dissolution by the King, or by the efflux of the term for which they were elected. Prorogation or dissolution constitutes there what is called a session; provided some act was passed. In this case all matters depending before them are discontinued, and at their next meeting are to be taken up *de novo*, if taken up at all. *1 Blackst., 186*. Adjournment, which is by themselves, is no more than a continuance

^a During session of Congress neither House shall adjourn for more than three days without consent of the other. (Constitution U. S., art. 1, sec. 6, par. 1.)

of the session from one day to another, or for a fortnight, a month, &c., ad libitum. All matters depending remain in statu quo, and when they meet again, be the term ever so distant, are resumed, without any fresh commencement, at the point at which they were left. 1 *Lev.*, 165; *Lex. Parl.*, c. 2; 1 *Ro. Rep.*, 29; 4 *Inst.*, 7, 27, 28; *Hutt.*, 61; 1 *Mod.*, 252; *Ruffh. Jac.*, *L. Dict. Parliament*; 1 *Blackst.*, 186. Their whole session is considered in law but as one day, and has relation to the first day thereof. *Bro. Abr. Parliament*, 86.

Committees may be appointed to sit during a recess by adjournment, but not by prorogation. 5 *Grey*, 374; 9 *Grey*, 350; 1 *Chandler*, 50. Neither House can continue any portion of itself in any parliamentary function beyond the end of the session without the consent of the other two branches. When done, it is by a bill constituting them commissioners for the particular purpose.

The House of Representatives may empower a committee to sit during a recess which is within the constitutional term of the House (IV, 4541-4543), but not thereafter (IV, 4545). Therefore committees are created commissioners by law if their functions are to extend beyond the term of the Congress (IV, 4545).

Congress separate in two ways only, to wit, by adjournment, or dissolution by the efflux of their time. What, then, constitutes a session with them? A dissolution certainly closes one session, and the meeting of the new Congress begins another. The Constitution authorizes

§ 582. Sitting of committees in recesses, and creation of commissions to sit after Congress adjourns.

§ 583. Sessions and recesses of Congress.

§ 584.

the President, "on extraordinary occasions to convene both Houses, or either of them." I, 3. If convened by the President's proclamation, this must begin a new session, and of course determine the preceding one to have been a session. So if it meets under the clause of the Constitution which says, "the Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day." I, 4. This must begin a new session; for even if the last adjournment was to this day the act of adjournment is merged in the higher authority of the Constitution, and the meeting will be under that, and not under their adjournment. So far we have fixed landmarks for determining sessions. * * *

In the later practice of Congress it has been established that when the two Houses adjourn for more than three days and not to or beyond a day fixed by Constitution or law for the next regular session to begin, the session is not thereby necessarily terminated (V, 6676, 6677). And in one instance the two Houses by concurrent resolution provided for adjournment to a certain day with a provision that if there be no quorum present on that day the session should terminate (V, 6686). In the later but not the earlier practice the fact that Congress has met once within the year does not make uncertain the constitutional mandate to meet on the first Monday of December (I, 10, 11). And where a special session continued until the time prescribed by the Constitution for the annual meeting without an appreciable intervening time (V, 6690, 6692), a question arose as to whether there had actually been a recess of Congress (V, 6687, 6693), with the conclusion that a recess was a real and not an imaginary time (V, 6687).

* * *

§ 584. Manner of
closing a session
by action of the
two Houses.

In other cases it is declared by the joint vote authorizing the President of the Senate and the Speaker to close the session on a fixed day, which is usually in the following form: "Resolved by the Senate and

House of Representatives, that the President of the Senate and the Speaker of the House of Representatives be authorized to close the present session by adjourning their respective Houses on the —— day of ——.”

In the modern practice the resolving clause of the joint resolution is in form different from that given by Jefferson.

When it was said above that all matters depending before Parliament were discontinued by the determination of the session, it was not meant for judiciary cases depending before the House of Lords, such as impeachments, appeals, and writs of error. These stand continued, of course, to the next session. *Raym.*, 120, 381; *Ruffh. Fac.*, L. D., *Parliament*.

Impeachments stand, in like manner, continued before the Senate of the United States.

In the House of Representatives Rule XXVI and the practice thereunder show that the two Houses of Congress have departed from the Parliamentary law.

SEC. LII.—TREATIES.

* * * * *

Treaties are legislative acts. A treaty is the law of the land. It differs from other laws only as it must have the consent of a foreign nation, being but a contract with respect to that nation. In all countries, I believe, except England, treaties are made by the legislative power; and there, also, if they touch the laws of the land they must be approved by Parliament. *Ware v. Hynton*, 3 *Dallas's Rep.*, 223.

§ 586. General nature of treaties.

§ 587.

It is acknowledged, for instance, that the King of Great Britain cannot by a treaty make a citizen of an alien. *Vattel, b. 1, c. 19, sec. 214.* An act of Parliament was necessary to validate the American treaty of 1783. And abundant examples of such acts can be cited. In the case of the treaty of Utrecht, in 1712, the commercial articles required the concurrence of Parliament; but a bill brought in for that purpose was rejected. France, the other contracting party, suffered these articles, in practice, to be not insisted on, and adhered to the rest of the treaty. 4 *Russell's Hist. Mod. Europe, 457*; 2 *Smollet, 242, 246.*

By the Constitution of the United States this department of legislation is confined to two branches only of the ordinary legislature—the President originating and the Senate having a negative. To what subjects this power extends has not been defined in detail by the Constitution; nor are we entirely agreed among ourselves. 1. It is admitted that it must concern the foreign nation party to the contract, or it would be a mere nullity, *res inter alias acta.* 2. By the general power to make treaties, the Constitution must have intended to comprehend only those subjects which are usually regulated by treaty, and can not be otherwise regulated. 3. It must have meant to except out of these the rights reserved to the States; for surely the President and Senate can not do by treaty what the whole Government is interdicted from doing in

§ 587. Jefferson's
discussion of
treaties under the
Constitution.

any way. 4. And also to except those subjects of legislation in which it gave a participation to the House of Representatives. This last exception is denied by some on the ground that it would leave very little matter for the treaty power to work on. The less the better, say others. The Constitution thought it wise to restrain the Executive and Senate from entangling and embroiling our affairs with those of Europe. Besides, as the negotiations are carried on by the Executive alone, the subjecting to the ratification of the Representatives such articles as are within their participation is no more inconvenient than to the Senate. But the ground of this exception is denied as unfounded. For examine, e. g., the treaty of commerce with France, and it will be found that, out of thirty-one articles, there are not more than small portions of two or three of them which would not still remain as subjects of treaties, untouched by these exceptions.

The participation of the House of Representatives in the treaty-making power has been often examined since Jefferson's Manual was written. The House has in several instances taken action in carrying into effect, terminating, enforcing, and suggesting treaties (II, 1502-1505, 1520-1522), although sometimes the propriety of requesting the Executive to negotiate a treaty has been questioned (II, 1514-1517).

The exact authority of the House in the making of general treaties has been the subject of differences of opinion. In 1796 the House affirmed that when a treaty related to subjects within the power of Congress it was the constitutional duty of the House to deliberate on the expediency of carrying such treaty into effect (II, 1509); and in 1816, after a discussion with the Senate, the House maintained its position that a treaty must depend on a law of Congress for its execution as to such stipulations as relate

§ 588. General action of the House as to treaties.

§ 589. Authority of the House as to treaties in general.

§§ 590-598.

to subjects constitutionally intrusted to Congress (II, 1506). In 1868 the House's assertion of right to a voice in carrying out the stipulations of certain treaties was conceded in a modified form (II, 1508). Again, in 1871, the House asserted its prerogative (II, 1523). In 1820 and 1868 there were discussions of the House's functions as to treaties ceding or acquiring foreign territory (II, 1507, 1508), and at various other times there have been discussions of the general subject (II, 1509, 1546, 1547).

After long and careful consideration the Judiciary Committee of the House decided, in 1887, that the executive branch of the Government might not conclude a treaty affecting the revenue without the assent of the House (II, 1528-1530), and a Senate committee after examination con-

§ 590. Authority of the House as to revenue treaties.

cluded that duties were more properly regulated with the publicity of congressional action than by treaties negotiated by the President and ratified by the Senate in secrecy (II, 1532). In practice the House has acted on revenue treaties (II, 1531, 1533); and in 1880 it declared the negotiation of a revenue treaty an invasion of its prerogatives (II, 1524). At other times the subject has been discussed (II, 1525-1528, 1531, 1533).

After long discussion the House, in 1871, successfully asserted its right to a voice in approving Indian treaties (II, 1535, 1536), although in earlier times this prerogative had been jealously guarded by the Executive (II, 1534).

There have been various conflicts with the Executive over requests of the House for papers relating to treaties (II, 1509-1513, 1518, 1519, 1561).

Treaties being declared, equally with the laws of the United States, to be the supreme law of the land, it is understood that an act of the legislature alone can declare them infringed and rescinded. This was accordingly the process adopted in the case of France in 1798.

§ 592. Treaties abrogated by law.

Notice to a foreign government of the abrogation of a treaty is authorized by a joint resolution (V, 6270).

It has been the usage for the Executive, when it communicates a treaty to the Senate for their ratification, to communicate also the correspondence of the negotiators. This having been omitted in the case of the

§ 593. Procedure of the Senate as to treaties.

Prussian treaty, was asked by a vote of the House of February 12, 1800, and was obtained. And in December, 1800, the convention of that year between the United States and France, with the report of the negotiations by the envoys, but not their instructions, being laid before the Senate, the instructions were asked for and communicated by the President.

The mode of voting on questions of ratification is by nominal call.

The Senate now has rules governing its procedure on treaties.

SEC. LIII.—IMPEACHMENT.

* * * * *

These are the provisions of the Constitution of the United States on the subject of impeachments. The following is a sketch of some of the principles and practices of England on the same subject:

§ 594. Jurisdiction of Lords and Commons as to impeachments.

Jurisdiction. The Lords can not impeach any to themselves, nor join in the accusation, because they are the judges. *Seld. Judic. in Parl.*, 12, 63. Nor can they proceed against a commoner but on complaint of the Commons. *Ib.*, 84. The Lords may not, by the law, try a commoner for a capital offense, on the information of the King or a private person, because the accused is entitled to a trial by his peers generally; but on accusation by the House of Commons, they may proceed against the delinquent, of whatsoever degree, and whatsoever be the nature of

§§ 595, 596.

the offense; for there they do not assume to themselves trial at common law. The Commons are then instead of a jury, and the judgment is given on their demand, which is instead of a verdict. So the Lords do only judge, but not try the delinquent. *Ib.*, 6, 7. But Wooddeson denies that a commoner can now be charged capitally before the Lords, even by the Commons; and cites Fitzharris's case, 1681, impeached of high treason, where the Lords remitted the prosecution to the inferior court. 8 *Grey's Deb.*, 325-7; 2 *Wooddeson*, 576, 601; 3 *Seld.*, 1604, 1610, 1618, 1619, 1641; 4 *Blackst.*, 25; 9 *Seld.*, 1656; 73 *Seld.*, 1604-18.

Accusation. The Commons, as the grand inquest of the nation, becomes suitors for penal justice. 2 *Wood.*, 597; 6 *Grey*, 356. The general course is to pass a resolution containing a criminal charge against the supposed delinquent, and then to direct some member to impeach him by oral accusation, at the bar of the House of Lords, in the name of the Commons. The person signifies that the articles will be exhibited, and desires that the delinquent may be sequestered from his seat, or be committed, or that the peers will take order for his appearance. *Sachev. Trial*, 325; 2 *Wood.*, 602, 605; *Lords' Journ.*, 3 *June*, 1701; 1 *Wms.*, 616; 6 *Grey*, 324.

In the House of Representatives there are various methods of setting an
 § 596. Inception of impeachment proceedings in the House. impeachment in motion: by charges made on the floor on the responsibility of a Member or Delegate (III, 2342, 2400, 2469, 1303); by charges preferred by a memorial, which is usually referred to a committee for examination (III, 2364, 2491, 2494, 2496, 2499, 2515); by a message from the

President (III, 2294, 2319); by charges transmitted from the legislature of a State (III, 2469) or Territory (III, 2487) or from a grand jury (III, 2488); or from facts developed and reported by an investigating committee of the House (III, 2399, 2444).

A direct proposition to impeach is a question of high privilege in the House and at once supersedes business otherwise in order under the rules governing the order of business (III, 2045-2048). It may not even be superseded by an election case, which is also a matter of high privilege (III, 2581). It does not lose its privilege from the fact that a similar proposition has been made at a previous time during the same session of Congress (III, 2408), previous action of the House not affecting it (III, 2053). So, also, propositions relating to an impeachment already made are privileged (III, 2400, 2402, 2410); but a resolution simply proposing an investigation, even though impeachment may be a possible consequence, is not privileged (III, 2050, 2546). But where a resolution of investigation positively proposes impeachment or suggests that end, it has been admitted as of privilege (III, 2051, 2052, 2401, 2402).

The impeachment having been made on the floor by a Member (III, 2342, 2400), or charges suggesting impeachment having been made by memorial (III, 2495, 2520, 2516) or even appearing through common fame (III, 2385, 2506), the House has at times ordered an investigation at once. At other times it has refrained from ordering investigation until the charges had been examined by a committee (III, 2364, 2488, 2491, 2492, 2494, 2504, 2513).

The House has always examined the charges by its own committee before it has voted to impeach (III, 2294, 2487, 2501). This committee has sometimes been a select committee (III, 2342, 2487, 2494), sometimes a standing committee (III, 2400, 2409). In some instances the committee has made its inquiry *ex parte* (III, 2511, 2319, 2343, 2366, 2385, 2403, 2496); but in the later practice the sentiment of committees has been in favor of permitting the accused to explain, present witnesses, cross-examine (III, 2445, 2471, 2518), and be represented by counsel (III, 2470, 2501, 2511, 2516).

Its committee on investigation having reported, the House may vote the impeachment (III, 2367, 2412), and, after having notified the Senate by message (III, 2413, 2446), may direct the impeachment to be presented at the bar of the Senate by a single Member (III, 2294), or by two (III, 2319, 2343, 2367), or even five Members (III, 2445). These Members in one notable case represented the majority party alone, but ordinarily include

§§ 601, 602.

representation of the minority party (III, 2445, 2472, 2505). The chairman of the committee impeaches at the bar of the Senate by oral accusation (III, 2413, 2446, 2473), and requests that the Senate take order as to appearance; but in only one case has the parliamentary law as to sequestration and committal been followed (III, 2118, 2296), later inquiry resulting in the conclusion that the Senate had no power to take into custody the body of the accused (III, 2324, 2367). Having delivered the impeachment the committee return to the House and report verbally (III, 2413, 2446).

Process. If the party do not appear, proclamations

§ 601. The writ
of summons for
appearance of
respondent.

are to be issued, giving him a day to appear. On their return they are strictly examined. If any error be found in them, a new proclamation issues, giving a short day. If he appear not, his goods may be arrested, and they may proceed. *Seld. Jud.*, 98, 99.

The managers for the House of Representatives attend in the Senate after the articles have been exhibited and demand that process issue for the attendance of respondent (III, 2451, 2478), after which they return and report verbally to the House (III, 2423, 2451). The Senate thereupon issue a writ of summons, fixing the day of return (III, 2423, 2451); and in a case wherein the respondent did not appear by person or attorney the Senate published a proclamation for him to appear (III, 2393). But the respondent's goods were not attached.

Articles. The accusation (articles) of the Com-

§ 602. Exhibition
and form of
articles.

mons is substituted in place of an indictment. Thus, by the usage of Parliament, in impeachment for writing or speaking, the particular words need not be specified. *Sach. Tr.*, 325; 2 *Wood.*, 602, 605; *Lords' Journ.*, 3 June, 1701; 1 *Wms.*, 616.

The House of Representatives exhibits its articles after the impeachment has been carried to the bar of the Senate. The managers, who are elected by the House (III, 2300, 2345, 2417, 2448) or appointed by the Speaker (III, 2388, 2475), carry the articles in obedience to a resolution

of the House (III, 2417, 2419, 2448) to the bar of the Senate (III, 2420, 2449, 2476), the House having previously informed the Senate (III, 2419, 2448) and received a message informing them of the readiness of the latter body to receive the articles (III, 2078, 2325, 2345). Having exhibited the articles the managers return and report verbally to the House (III, 2449, 2476). The articles in the Belknap impeachment were held sufficient, although attacked for not describing the respondent as one subject to impeachment (III, 2123). These articles are signed by the Speaker and attested by the Clerk (III, 2302, 2449), and in form approved by the practice of the House (III, 2420, 2449, 2476).

Appearance. If he appear, and the case be capital, he answers in custody; though not if the accusation be general. He is not to be committed but on special accusations. If it be for a misdemeanor only, he answers, a lord in his place, a commoner at the bar, and not in custody, unless, on the answer, the Lords find cause to commit him, till he finds sureties to attend, and lest he should fly. *Seld. Jud.*, 98, 99. A copy of the articles is given him, and a day fixed for his answer. *T. Ray.*; 1 *Rushw.*, 268; *Fost.*, 232; 1 *Clar. Hist. of the Reb.*, 379. On a misdemeanor, his appearance may be in person, or he may answer in writing, or by attorney. *Seld. Jud.*, 100. The general rule on accusation for a misdemeanor is, that in such a state of liberty or restraint as the party is when the Commons complain of him, in such he is to answer. *Ib.*, 101. If previously committed by the Commons, he answers as a prisoner. But this may be called in some sort *judicium parium suorum*. *Ib.* In misdemeanors the party has a right to counsel by the

§ 608. Parliamentary law as to appearance of respondent.

§§ 604, 605.

common law, but not in capital cases. *Seld. Jud.*, 102, 105.

This paragraph of the parliamentary law is largely obsolete so far as the practice of the House of Representatives and the Senate are concerned. The accused may appear in person or by attorney (III, 2127, 2349, 2424), or he may not appear at all (III, 2307, 2333, 2393). In case he does not appear the House does not ask that he be compelled to appear (III, 2308), but the trial proceeds as on a plea of "not guilty." It has been decided that the Senate has no power to take into custody the body of the accused (III, 2324, 2367). The writ of summons to the accused recites the articles and notifies him to appear at a fixed time and place and file his answer (III, 2127). In all cases respondent may appear by counsel (III, 2129), and in one trial, when a petition set forth that respondent was insane, the counsel of his son was admitted to be heard and present evidence in support of the petition, but not to make argument (III, 2333).

Answer. The answer need not observe great strictness of form. He may plead guilty as to part, and defend as to the residue; or, saving all exceptions, deny the whole or give a particular answer to each article separately. *1 Rush.*, 274; *2 Rush.*, 1374; *12 Parl. Hist.*, 442; *3 Lords' Journ.*, 13 Nov., 1643; *2 Wood.*, 607. But he cannot plead a pardon in bar to the impeachment. *2 Wood.*, 615; *2 St. Tr.*, 735.

The answer of the President took up the articles one by one, denying some of the charges, admitting others but denying that they set forth impeachable offenses, and excepting to the sufficiency of others (III, 2428). The form of this answer was commented on during preparation of the replication in the House (III, 2431). Blount and Belknap demurred to the charges on the ground that they were not civil officers within the meaning of the Constitution (III, 2310, 2453), and Swayne also raised questions as to the jurisdiction of the Senate (III, 2481). The answer is part of the pleadings, and exhibits in the nature of evidence may not properly be attached thereto (III, 2124).

Replication, rejoinder, &c. There may be a replication, rejoinder, &c. *Seld. Jud.*, 114; § 606. Other pleadings. 8 *Grey's Deb.*, 233; *Sach. Tr.*, 15; *Journ. H. of Commons*, 6 March, 1640-1.

A replication is always filed, and in one instance the pleadings proceeded to a rejoinder, surrejoinder, and similiter (III, 2455). A respondent has also filed a protest instead of pleading on the merits (III, 2461), but there was objection to this and the Senate barely permitted it. In another case respondent interposed a plea as to jurisdiction of offenses charged in certain articles, but declined to admit that it was a demurrer with the admissions pertinent thereto (III, 2125, 2431). In the Belknap trial the House was sustained in averring in pleadings as to jurisdiction matters not averred in the articles (III, 2123). The right of the House to allege in the replication matters not touched in the articles has been discussed (III, 2457).

Witnesses. The practice is to swear the witnesses in open House, and then examine them there; or a committee may be named, who shall examine them in committee, either on interrogatories agreed on in the House, or such as the committee in their discretion shall demand. *Seld. Jud.*, 120, 123. § 607. Examination of witnesses.

In trials before the Senate witnesses have always been examined in open Senate, and never by a committee, although such procedure has been once suggested (III, 2217).

Jury. In the case of Alice Pierce, 1 *R.*, 2, a jury was impaneled for her trial before a committee. *Seld. Jud.*, 123. But this was on a complaint, not on impeachment by the Commons. *Seld. Jud.*, 163. It must also have been for a misdemeanor only, as the Lords spiritual sat in the case, which they do on misdemeanors, but not in capital cases. *Id.*, 148. The § 608. Relation of jury trial to impeachment.

judgment was a forfeiture of all her lands and goods. *Id.*, 188. This, Selden says, is the only jury he finds recorded in Parliament for misdemeanors; but he makes no doubt, if the delinquent doth put himself on the trial of his country, a jury ought to be impaneled, and he adds that it is not so on impeachment by the Commons, for they are in loco proprio, and there no jury ought to be impaneled. *Id.*, 124. The *Ld. Berkeley*, 6 *E.*, 3, was arraigned for the murder of L. 2, on an information on the part of the King, and not on impeachment of the Commons; for then they had been patria sua. He waived his peerage, and was tried by a jury of Gloucestershire and Warwickshire. *Id.*, 126. In 1 *H.*, 7, the Commons protest that they are not to be considered as parties to any judgment given, or hereafter to be given in Parliament. *Id.*, 133. They have been generally and more justly considered, as is before stated, as the grand jury; for the conceit of Selden is certainly not accurate, that they are the patria sua of the accused, and that the Lords do only judge, but not try. It is undeniable that they do try; for they examine witnesses as to the facts, and acquit or condemn, according to their own belief of them. And Lord Hale says, "the peers are judges of law as well as of fact;" 2 *Hale*, *P. C.*, 275; consequently of fact as well as of law.

No jury trial is possible as part of an impeachment trial under the Constitution (III, 2313).

Presence of Commons. The Commons are to be present at the examination of witnesses. *Seld. Jud.*, 124. Indeed, they are to attend throughout, either as a committee of the whole House, or otherwise, at discretion, appoint managers to conduct the proofs. *Rushw. Tr. of Straff.*, 37; *Com. Journ.*, 4 Feb., 1709-10; 2 Wood, 614. And judgment is not to be given till they demand it. *Seld. Jud.*, 124. But they are not to be present on impeachment when the Lords consider of the answer or proofs and determine of their judgment. Their presence, however, is necessary at the answer and judgment in cases capital *Id.*, 58, 158 as well as not capital; 162. * * *.

§ 610. Attendance of the House of Representatives. The House of Representatives has consulted its own inclination and convenience about attending its managers at an impeachment. It did not attend at all in the trials of Blount and Swayne (III, 2318, 2483); and after attending at the answer of Belknap, decided that it would be represented for the remainder of the trial by its managers alone (III, 2453). At the trial of the President the House, in Committee of the Whole, attended throughout the trial (III, 2427), but this is exceptional. In the Peck trial the House discussed the subject (III, 2377) and reconsidered its decision to attend the trial daily (III, 2028). While the Senate is deliberating the House does not attend (III, 2435); but when the Senate votes on the charges, as at the other open proceedings of the trial, it may attend (III, 2338, 2383, 2440). While it has frequently attended in Committee of the Whole, it may attend as a House (III, 2338).

* * * **The Lords debate the judgment among themselves.** Then the vote is first taken on the question of guilty or not guilty; and if they convict, the question, or particular sentence, is out of that which seemeth

§ 611. Voting on the articles in an impeachment trial.

§ 612.

to be most generally agreed on. *Seld. Jud.*, 167; 2 *Wood.*, 612.

The question in judgment in an impeachment trial has occasioned contention in the Senate (III, 2339, 2340), and in the trial of the President the form was left to the Chief Justice (III, 2438, 2439). In the Belknap trial there was much deliberation over this subject (III, 2466). In the Chase trial the Senate modified its former rule as to form of final question (III, 2363). The yeas and nays are taken on each article separately (III, 2098, 2339), but in the trial of the President the Senate, by order, voted on the articles in an order differing from the numerical order (III, 2440), adjourned after voting on one article (III, 2441), and adjourned without day after voting on three of the eleven articles (III, 2443). After a conviction the Senate votes on the punishment (III, 2339, 2397).

Judgment. Judgments in Parliament, for death, have been strictly guided per legem terræ, which they can not alter; and not at all according to their discretion. They can neither omit any part of the legal judgment nor add to it. Their sentence must be secundum non ultra legem. *Seld. Jud.*, 168, 171. This trial, though it varies in external ceremony, yet differs not in essentials from criminal prosecutions before inferior courts. The same rules of evidence, the same legal notions of crimes and punishments, prevailed; for impeachments are not framed to alter the law, but to carry it into more effectual execution against too powerful delinquents. The judgment, therefore, is to be such as is warranted by legal principles or precedents. 6 *Sta. Tr.*, 14; 2 *Wood.*, 611. The Chancellor gives judgment in misdemeanors; the Lord High Steward formerly in cases of life and death. *Seld. Jud.*, 180. But now the Steward is deemed not necessary. *Fost.*,

§ 612. Judgment in impeachments.

144; 2 *Wood.*, 613. In misdemeanors the greatest corporal punishment hath been imprisonment. *Seld. Jud.*, 184. The King's assent is necessary to capital judgments (but 2 *Wood.*, 614, contra), but not in misdemeanors. *Seld. Jud.*, 136.

The Constitution of the United States (Art. I, sec. 3, par. 7) limits the judgment to removal and disqualification.

Continuance. An impeachment is not discontinued by the dissolution of Parliament, but may be resumed by the new Parliament. *T. Ray* 383; 4 *Com. Journ.*, 23 Dec., 1790; *Lords' Jour.*, May 15, 1791; 2 *Wood.*, 618.

§ 613. Impeachment not interrupted by adjournments.

In Congress impeachment proceedings are not discontinued by a recess (III, 2299, 2304, 2344, 2375, 2407, 2505); and the Pickering impeachment was presented in the Senate on the last day of the Seventh Congress (III 2320); and at the beginning of the Eighth Congress the proceedings went on from that point (III, 2321). But an impeachment may proceed only when Congress is in session (III. 2006, 2462).

RULES OF THE HOUSE OF REPRESENTATIVES
WITH
NOTES AND ANNOTATIONS.



RULES OF THE HOUSE OF REPRESENTATIVES, WITH NOTES AND ANNOTATIONS.

RULE I.

DUTIES OF THE SPEAKER.

1. The Speaker shall take the chair on every legislative day precisely at the hour to which the House shall have adjourned at the last sitting, immediately call the Members to order, and on the appearance of a quorum, cause the Journal of the proceedings of the last day's sitting to be read, having previously examined and approved the same.

§ 614. Calling the House to order; and reading of the Journal.

This rule was adopted in 1789 and perfected in 1811 and 1824 (II, 1310). The hour of meeting is usually 12 m., fixed by standing order (I, 104–109, 116, 117; IV, 4325). Immediately after the Members are called to order prayer is offered by the Chaplain (IV, 3056). The presence of a quorum is ascertained if a question be raised (IV, 2733); and after the raising of the question the reading of the Journal must await the ascertainment (IV, 2732, 2927). The reading of the Journal may not be dispensed with except by unanimous consent or a motion or other action to suspend the rules (IV, 2747–2750); but the Journal of the last day of a session is not read on the first day of the next session (IV, 2742). Business is not transacted before the reading (IV, 2751–2756), but the simple motion to adjourn is admitted (IV, 2757) and a Member may be sworn in (I, 172). The reading may not be interrupted, even by business so highly privileged as a conference report (V, 6443; Rule XXVIII); but in cases of disorder the reading is suspended (II, 1630; IV, 2759). The Speaker's examination and approval of the Journal is preliminary to the reading, and does not preclude subsequent amendment and approval by the House itself (IV, 2734–2738).

RULES OF THE HOUSE OF REPRESENTATIVES.

§§ 615-617.

Rule I.

§ 615. Speaker preserves order on floor and in galleries and lobby.

2. He shall preserve order and decorum, and, in case of disturbance or disorderly conduct in the galleries, or in the lobby, may cause the same to be cleared.

This rule was adopted in 1789 and amended in 1794 (II, 1343).

The Speaker may name a Member who is disorderly, but may not, of his own authority, censure or punish him (II, 1344, 1345). In cases of extreme disorder in Committee of the Whole the Speaker has taken the chair and restored order without a formal rising of the committee (II, 1348, 1648-1653, 1657). In an early instance the Speaker ordered the arrest of a person in the gallery; but this exercise of power was questioned (II, 1605).

3. He shall have general control, except as provided by rule or law, of the Hall of the House, and of the corridors and passages and of the unappropriated rooms in that part of the Capitol assigned to the use of the House, until further order.

§ 616. Speaker's control of the Hall, corridors, and rooms.

This rule was adopted in 1811 and amended in 1824 and 1885 (II, 1354).

Control of the appropriated rooms in the House portion of the Capitol is exercised by the House itself (V, 7273-7279), but repairs and alterations have been authorized by statute (V, 7280-7281).

4. He shall sign all acts, addresses, joint resolutions, writs, warrants, and subpoenas of, or issued by order of, the House, and decide all questions of order, subject to an appeal by any Member, on which appeal no Member shall speak more than once, unless by permission of the House.

§ 617. Speaker's signature to acts, warrants, subpoenas, etc.; and decision of questions of order subject to appeal

The portion of this rule relating to decisions on points of order was adopted in 1789 and amended in 1811; and the portion relating to the signing of acts, etc., was adopted in 1794 (II, 1313).

RULES OF THE HOUSE OF REPRESENTATIVES.

Rule I.

§§ 618-620.

Enrolled bills are signed first by the Speaker (IV, 3429). He declines to sign in the absence of a quorum (III, 3458), or pending a motion to reconsider (V, 5705); and the report of a committee as to the accuracy of the enrollment is first submitted, unless, as in rare instances only, the House by consent waives the requirement (IV, 3452). In cases of error the House has permitted the Speaker's signature to be vacated (IV, 3453, 3455-3457).

Warrants, subpoenas, etc., during recesses of Congress are signed only by authority specially given (III, 1753, 1763, 1806). The issuing of warrants must be specially authorized by the House (I, 287). The Speaker also signs the articles, replications, etc., in impeachments (III, 2370, 2455); and certifies cases of contumacious witnesses for action by the courts (III, 1691, 1769).

The Speaker may require that a question of order be presented in writing (V, 6865). He is not required to decide a question not directly presented by the proceedings (II, 1314). Debate being for his information, is within his discretion (V, 6919, 6920). He is constrained to give precedent its proper influence (II, 1317); and his decisions may be reexamined and reversed (IV, 4637). They are recorded in the Journal (IV, 2840, 2841), but responses to parliamentary inquiries are not so recorded (IV, 2842). Questions arising during a division are decided peremptorily (V, 5926), and when they arise out of any other question must be decided before that question (V, 6864). In rare instances the Speaker declines to rule until he has taken time for examination of the question (III, 2725). He rarely submits a question directly to the House for its decision (IV, 3173, 3282, 4930; V, 5014, 5323, 6701) or of his own initiative raises and submits a question (II, 1277, 1315, 1316). Even as to questions of privilege he usually, in later practice, makes a preliminary decision instead of submitting the question directly to the House (III, 2648, 2649, 2650, 2654, 2678). He does not decide on the legislative effect of propositions (II, 1274, 1323, 1324), or on the consistency of proposed action with other acts of the House (II, 1327-1336), or on the constitutional powers of the House (II, 1255, 1318-1320, 1490; IV, 3507), or on the propriety or expediency of a proposed course of action (II, 1275, 1325, 1326, 1337; IV, 3091-3093, 3127). He passes on the validity of conference reports (V, 6409, 6410, 6414-6416), but not on the sufficiency of the accompanying statements as distinguished from the form (V, 6511-6513). As to reports of committees, he does not decide as to their sufficiency (II, 1339; IV, 4653), or usually as to whether or not the committee have followed instructions (II, 1338; IV, 4404, 4689); but he has decided as to the validity of the authorization of a report (IV, 4592, 4593).

RULES OF THE HOUSE OF REPRESENTATIVES.

§§ 621-624.

Rule I,

The right of appeal insures the House against the arbitrary control of the Speaker and can not be taken away from the House

§ 621. Practice governing appeals. (V, 6002); but appeals may not be entertained from responses to parliamentary inquiries (V, 6002). The Speaker may vote to sustain his own decision (IV, 4569; V, 5686, 6956, 6957).

5. He shall rise to put a question, but may state it sitting; and shall put questions in this form, to wit: "As many as are in favor (as the question may be), say Aye;" and after the affirmative voice is expressed, "As many as are opposed, say No;" if he doubts, or a division is called for, the House shall divide; those in the affirmative of the question shall first rise from their seats, and then those in the negative; if he still doubts, or a count is required by at least one-fifth of a quorum, he shall name one from each side of the question to tell the Members in the affirmative and negative; which being reported, he shall rise and state the decision.

§ 622. Putting of the question by the Speaker.

§ 623. Voting viva voce, by division, and by tellers.

This rule was adopted in 1789, with revision and amendment in 1860 and 1880 (II, 1311).

One of the suppositions on which the parliamentary law is founded is that the Speaker will not betray his duty to make an honest count on a division (V, 6002).

In a full House (total membership of 391), tellers are ordered by 40; in Committee of the Whole by 20.

It is the duty of the Member to serve as teller when appointed by the Chair (V, 5987); but when Members of one side have declined, the second teller has been appointed from the other side (V, 5988) or the position has been left vacant (V, 5989). A Delegate may be appointed teller (II, 1302). Where there is a doubt as to the count by tellers the Chair may order the vote taken again (V, 5991), but this must be done before he has announced the result (V, 5993-5995).

§ 624. Ordering of tellers and taking of the vote.

RULES OF THE HOUSE OF REPRESENTATIVES.

Rule I.

§§ 625-627.

6. He shall not be required to vote in ordinary legislative proceedings, except where his vote would be decisive, or where the House is engaged in voting by ballot; and in all cases of a tie vote the question shall be lost.

§ 625. The Speaker's vote. Tie vote.

This rule was adopted in 1789, with amendment in 1850 (V, 5964).

The Speaker's name is not on the roll from which the yeas and nays are called (V, 5970) and is not called unless on his request. It is then called at the end of the roll (V, 5965), the Clerk calling him by name. The duty of giving a decisive vote may be exercised after the intervention of other business, or after the announcement of the result or on another day, if a correction of the roll shows a condition wherein his vote would be decisive (V, 5969, 6061-6063); and he also exercises the right to withdraw his vote in case a correction shows it to have been unnecessary (V, 5971). The Speakers have the same rights as other Members to vote (V, 5966, 5967) but rarely exercise it (V, 5964, footnote). The Chair may be counted on a vote by tellers (V, 5996, 5997).

7. He shall have the right to name any Member to perform the duties of the Chair, but such substitution shall not extend beyond an adjournment: *Provided, however,* That in case of his illness, he may make such appointment for a period not exceeding ten days, with the approval of the House at the time the same is made; and in his absence and omission to make such appointment, the House shall proceed to elect a Speaker pro tempore to act during his absence.

§ 626. Speaker pro tempore.

This rule was adopted in 1811, and amended in 1876 (II, 1377):

The right of the House to elect a Speaker pro tempore in the absence of the Speaker was exercised before the rule was adopted (II, 1405), although the House sometimes preferred to adjourn (I, 179). An elected Speaker pro tempore is not sworn (I, 229; II, 1386); but the Senate and sometimes the President are notified of his election (II, 1386-1389, 1405-1412).

§ 627. Election, oath, and designation of Speaker pro tempore.

RULES OF THE HOUSE OF REPRESENTATIVES.

§§ 628, 629.

Rule II.

He signs enrolled bills and appoints committees, functions not exercised by a Speaker pro tempore by designation (II, 1399, 1400, 1404) unless the designation has been approved by the House. A call of the House may take place with a Speaker pro tempore in the chair (IV, 2989). When the Speaker is not present at the opening of a session, he designates a Speaker pro tempore in writing (II, 1378, 1401), but he does not always name in open House the Member whom he calls to the chair temporarily during the day's sitting (II, 1379, 1400). A Speaker pro tempore sometimes designates another Speaker pro tempore (II, 1384). Members of the minority have been called to the chair on occasions of ceremony (II, 1383), but in rare instances on other occasions (II, 1382, 1390; IV, 2596).

RULE II.

ELECTION OF OFFICERS.

There shall be elected by a viva voce vote, at the commencement of each Congress, to continue in office until their successors are chosen and qualified, a Clerk, Sergeant-at-Arms, Doorkeeper, Postmaster, and Chaplain, each of whom shall take an oath to support the Constitution of the United States, and for the true and faithful discharge of the duties of his office to the best of his knowledge and ability, and to keep the secrets of the House; and each shall appoint all of the employees of his department provided for by law.

§ 628. Election of officers.

§ 629. Oath and duties of officers.

A rudimentary form of this rule was adopted in 1789, and was amended several times prior to 1880, when it assumed its present form (I, 187). The House having discarded a theory that the rules might be imposed by one House on its successor (V, 6743-6745), it follows that this rule is not operative at the organization. The House, by order or usage, elects its Speaker viva voce (I, 204, 208); but the officers mentioned in the rule are usually chosen by resolution, which is not a viva voce election (I, 193, 194). The act of 1789 provides that the oath of office shall be administered

RULES OF THE HOUSE OF REPRESENTATIVES.

Rule III.

§§ 630, 631.

to the Speaker by any Member and by the Speaker to the Clerk (I, 130). The Speaker also at the same time administers the oath to the other elective officers (I, 81). The Member of longest continuous service administers the oath to the Speaker (I, 131). The Speaker can select Member to administer oath. (Speaker Clark, 1st. sess. 62d Cong., Apr. 4, 1911.) The requirement that the officers be sworn to keep the secrets of the House is obsolete (I, 187).

The House has declined to interfere with the Clerk's power of removing his subordinates (I, 286). Employees under the Clerk and other officers are to be assigned only to the duties for which they are appointed (V, 7232).

RULE III.

DUTIES OF THE CLERK.

1. The Clerk shall, at the commencement of the first session of each Congress, call the Members to order, proceed to call the roll of Members by States in alphabetical order, and, pending the election of a Speaker or Speaker pro tempore, call the House to order, preserve order and decorum, and decide all questions of order subject to appeal by any Member.

§ 630. Clerk's
duties at
organization.

This rule was framed in 1880, on a basis furnished by a rule of 1860 (I, 64).

As rules are not usually adopted until after the election of Speaker, this rule is not in force at the time of organization of a new House.

The procedure at organization is, however, according to a practice conforming to the terms of the rule (I, 81).

While the Speaker ceases to be an officer of the House with the expiration of a Congress, the Clerk, by old usage, continues in a new Congress (I, 187, 188, 235, 244).

The roll of Members is made up by the Clerk from the credentials, in accordance with a provision of law (I, 14-62). The call of the roll may not be interrupted, especially by one not on that roll (I, 84), and a person not on the roll may not be recognized (I, 86). A motion to proceed to the election of Speaker is of higher privilege than a motion to correct the roll (I, 19-24). The House has declined to permit enrollment by the Clerk to be final as to prima facie right (I, 376, 589, 592).

§ 631. The roll of
Members-elect.

RULES OF THE HOUSE OF REPRESENTATIVES.

§§ 682-684.

Rule III.

The Clerk, in presiding before the election of Speaker, recognizes Members (I, 74).

The Members-elect have, before the election of Speaker or adoption of rules, authorized the Clerk and Sergeant-at-Arms of the last House to preserve order (I, 101); but usually such action has not been taken, although an occasion might arise to make it necessary (I, 76, 77).

In early years the authority of the Clerk to decide questions of order pending the election of a Speaker was questioned (I, 65), and the Clerks often declined to make decisions (I, 68-72; V, 5325), although in 1855 occur exceptions to this theory (I, 91). But in 1860 the provisions of the present rule were adopted (I, 64), with a further rule that the rules of one House should apply in the organization of its successor (V, 6743-6747); and under this arrangement the Clerks have made rulings (I, 76, 77). In 1890 the theory that the rules of one House may be made binding on its successor was overthrown (V, 6747). In a case of vacancy arising after the adoption of rules, this rule would be operative and conclude questions as to the Clerk's authority.

2. He shall make and cause to be printed and delivered to each Member, or mailed to his address, at the commencement of every regular session of Congress, a list of the reports which it is the duty of any officer or Department to make to Congress, referring to the act or resolution and page of the volume of the laws or Journal in which it may be contained, and placing under the name of each officer the list of reports required of him to be made.

§ 683. Clerk furnishes a list of reports.

This rule was adopted in 1822 (I, 252).

3. He shall note all questions of order, with the decisions thereon, the record of which shall be printed as an appendix to the Journal of each session; and complete, as soon after the close of the session as possible, the

§ 684. Clerk's duty as to Journal and documents.

RULES OF THE HOUSE OF REPRESENTATIVES.

Rule III.

§§ 635-639.

printing and distribution to Members and Delegates of the Journal of the House, together with an accurate and complete index; retain in the library at his office, for the use of the Members and officers of the House, and not to be withdrawn therefrom, two copies of all the books and printed documents deposited there; send, at the end of each session, a printed copy of the Journal thereof to the executive and to each branch of the legislature of every State and Territory; preserve for and deliver or mail to each Member and Delegate an extra copy, in good binding, of all documents printed by order of either House of the Congress to which he belonged; attest and affix the seal of the House to all writs, warrants,

§ 635. Attests and seals warrants, subpoenas, etc.

§ 636. Certifies passage of bills.

§ 637. Makes contracts.

and subpoenas issued by order of the House, certify to the passage of all bills and joint resolutions, make or approve all contracts, bargains, or agreements relative to furnishing any matter or thing, or for the performance of any labor for the House of Representatives, in pursuance of law or order of the House, keep full

§ 638. Keeps contingent and stationery accounts.

§ 639. Pays officers and employees.

and accurate accounts of the disbursements out of the contingent fund of the House, keep the stationery account of Members and Delegates, and pay them as provided by law. He shall pay to the officers and employees of the House of Representatives, on the first day of each month, the amount of their salaries that shall be due them; and

RULES OF THE HOUSE OF REPRESENTATIVES.

§§ 639A, 640.

Rule IV.

when the first day of the month falls on Sunday he shall pay them on the day next preceding.

4. He shall, in case of temporary absence or disability, designate the Chief Clerk, or some other official in his office, to sign all papers that may require the official signature of the Clerk of the House, and to do all other acts, except such as are provided for by statute, that may be required under the rules and practice of the House to be done by the Clerk. Such official acts, when so done by the Chief Clerk or other official, shall be under the name of the Clerk of the House. The said designation shall be in writing, and shall be laid before the House and entered on the Journal.

In 1880 several rules, adopted at different periods from 1794 to 1846, were consolidated into this rule; which was amended also in 1892 (I, 251).

Various other administrative duties, similar to those specified in this rule, are imposed on the Clerk by law (I, 253); and the law also makes it his duty to furnish stationery, blank books, etc., to the committees and officers of the House (V, 7322); to exercise discretionary authority as to reprinting of bills and documents (V, 7319); to certify to the compensation of Members during recesses of Congress (I, 1156); and to receive and print the testimony taken in election contests (I, 703, 705).

RULE IV.

DUTIES OF THE SERGEANT-AT-ARMS.

1. It shall be the duty of the Sergeant-at-Arms to attend the House and the Committee of the Whole during their sittings, to maintain order under the direction of the Speaker or Chairman, and, pending the election of

§ 640. Sergeant-at-Arms enforces authority of House.

RULES OF THE HOUSE OF REPRESENTATIVES.

Rule V.

§§ 641-648.

a Speaker or Speaker pro tempore, under the direction of the Clerk; execute the commands of the House, and all processes issued by authority thereof, directed to him by the Speaker; keep the accounts for the pay and mileage of Members and Delegates, and pay them as provided by law.

§ 641. Disburses pay and mileage of Members.

This rule was adopted in 1789, with additions and amendments in 1838, 1877, and 1890 (I, 257).

At the organization of the House in a new Congress the election of Speaker occurs before the adoption of rules. Therefore this rule is not in force at that time, and in case of necessity a special rule may be adopted conferring the authority, as was done in 1849 and 1859 (I, 101, 102).

Duties are imposed on the Sergeant-at-Arms by law (I, 258): Control of Capitol police; and the making up of the roll of Members-elect in case of vacancy in the office of Clerk, or the absence or disability of that officer.

§ 642. The mace the symbol of the Sergeant-at-Arms' office.

2. The symbol of his office shall be the mace, which shall be borne by him while enforcing order on the floor.

This rule was adopted in 1789 (II, 1346). An attempt to enforce order without the mace gave rise to a question of privilege (II, 1347).

RULE V.

DUTIES OF THE DOORKEEPER.

1. The Doorkeeper shall enforce strictly the rules relating to the privileges of the Hall and be responsible to the House for the official conduct of his employees.

§ 643. General duties of the Doorkeeper.

This rule was adopted in 1838, and amended in 1880 (I, 260).

The law also requires of the Doorkeeper certain administrative duties (I, 262): Care of the apartments occupied by the House; custody of furniture, books, etc.; charge of the documents in the folding and document rooms; supervision of janitor service; and the making of the roll of Members-elect in case the Clerk and Sergeant-at-Arms are unable to perform the duty.

RULES OF THE HOUSE OF REPRESENTATIVES.

§§ 644-646.

Rule VI.

When a message is received by the House, the Doorkeeper introduces the bearer thereof (V 6591).

2. At the commencement and close of each session of Congress he shall take an inventory of all the furniture, books, and other public property in the several committee and other rooms under his charge, and report the same to the House, which report shall be referred to the Committee on Accounts to ascertain and determine the amount for which he shall be held liable for missing articles.

§ 644. Doorkeeper the custodian of furniture, books, etc.

This rule was adopted in 1865, and amended in 1880 (I, 261).

3. He shall allow no person to enter the room over the hall of the House during its sittings; and fifteen minutes before the hour of the meeting of the House each day he shall see that the floor is cleared of all persons except those privileged to remain, and kept so until ten minutes after adjournment..

§ 645. The Doorkeeper clears the floor of unauthorized persons.

This rule was adopted in 1869, with amendments in 1880 and 1890 (V, 7295).

RULE VI.

DUTIES OF THE POSTMASTER.

The Postmaster shall superintend the post-office kept in the Capitol and House Office Building for the accommodation of Representatives, Delegates, and officers of the House, and be held responsible for the prompt and safe delivery of their mail.

§ 646. The Postmaster superintends the House post-office.

This rule was adopted in 1838, with amendment in 1880 (I, 270). The law requires the Postmaster to account at the first of each regular session for the government property in his possession (I, 271).

RULES OF THE HOUSE OF REPRESENTATIVES.

Rules VII, VIII.

§§ 647-650,

RULE VII.

DUTIES OF THE CHAPLAIN.

The Chaplain shall attend at the commencement of each day's sitting of the House and open the same with prayer.

§ 647. Duties of the Chaplain.

This rule was adopted in 1880 (I, 272), but the sessions of the House were opened with prayer from the first, and the Chaplain was an officer of the House before the adoption of the rule (I, 273-282).

RULE VIII.

OF THE MEMBERS.

1. Every Member shall be present within the hall of the House during its sittings, unless excused or necessarily prevented; and shall vote on each question put, unless he has a direct personal or pecuniary interest in the event of such question.

§ 648. Members required to be present and vote.

§ 649. Personal interest.

This rule was adopted in 1789, with amendment in 1890 (V, 5941).

Leaves of absence are presented pending the motion to adjourn (IV, 3151), and are usually granted by general consent, but sometimes are opposed or even refused (II, 1142-1145). Whether or not they are privileged is a matter of doubt (II, 1146, 1147). Excuses for absence, as distinguished from leaves of absence, may be granted by less than a quorum (IV, 3000-3002). The statutes provide that deductions may be made from the salaries of Members who are absent without sufficient excuse (II, 1149, 1150); and this law has actually been enforced (IV, 3011, footnote).

It has been found impracticable to enforce the provision requiring every Member to vote (V, 5942-5948); and the weight of authority also favors the idea that there is no authority in the House to deprive a Member of the right to vote (V, 5937, 5952, 5959, 5966, 5967). In one or two instances the Speaker has decided that, because of personal interest, a Member should not vote (V, 5955, 5958); but usually the Speaker has held that the Member himself should determine this question (V, 5950, 5951), and one Speaker denied his own power to deprive a Member of the constitutional right to vote (V, 5956).

§ 650. Member's control of his own vote.

RULES OF THE HOUSE OF REPRESENTATIVES.

§§ 651-658.

Rule IX.

The House has frequently excused Members from voting in cases of personal interest (III, 2294; V, 5962).

It is a principle of "immemorial observance" that a Member should withdraw when a question concerning himself arises (V, 5949); but it has been held that the disqualifying interest must be such as affects the Member directly (V, 5954, 5955, 5963), and not as one of a class (V, 5952).

In a case where questions affected the titles of several Members to their seats, each refrained from voting in his own case, but did vote on the identical cases of his associates (V, 5957, 5958). And while a Member should not vote on the direct questions affecting himself, he has sometimes voted on incidental questions (V, 5960, 5961).

2. Pairs shall be announced by the Clerk, after the completion of the second roll call, from a written list furnished him, and signed by the Member making the statement to the Clerk, which list shall be published in the Record as a part of the proceedings, immediately following the names of those not voting: *Provided*, pairs shall be announced but once during the same legislative day.

§ 652. Pairs.

This rule was adopted in 1880, although the practice of pairing had then existed in the House for many years (V, 5981).

Pairs may not be announced at a time other than that prescribed by the rule (V, 6046) or in Committee of the Whole (V, 5984). The House does not consider questions arising out of the breaking of a pair (V, 5982, 5983, 6095) or permit a Member to vote after the call on the plea that he had refrained because of misunderstanding as to a pair (V, 6080, 6081).

RULE IX.

QUESTIONS OF PRIVILEGE.

Questions of privilege shall be, first, those affecting the rights of the House collectively, its safety, dignity, and the integrity of its proceedings; second, the rights, reputation, and conduct of Members, individually, in their

§ 653. Definition and precedence of questions of privilege.

RULES OF THE HOUSE OF REPRESENTATIVES.

Rule IX.

§§ 654, 655.

representative capacity only; and shall have precedence of all other questions, except motions to adjourn.

This rule was adopted in 1880 (III, 2521). It merely put in form of definition what had been long established in the practice of the House, but what the House had hitherto been unwilling to define (II, 1603).

The privilege of the House, as distinguished from that of the individual § 654. **Privilege of the House.** Member, includes questions relating to its constitutional prerogatives, in respect to revenue legislation and appropriations (II, 1480-1501); including revenue, and other treaties (II, 1502-1537); its power to punish for contempt, whether of its own Members (II, 1641-1665), of witnesses who are summoned to give information (II, 1608, 1612; III, 1666-1724), or of other persons (II, 1597-1640); questions relating to its organization (I, 22-24, 189, 212, 290), and the title of its Members to their seats (III, 2579-2587), including various questions incidental thereto (I, 322, 328, 673, 742; II, 1207; III, 2588); the conduct of officers and employees (I, 284, 285; III, 2628, 2645-2647); comfort and convenience of Members and employees (III, 2629-2636); admission to the floor of the House (III, 2624-2626); the accuracy and propriety of reports in the Congressional Record (V, 7005-7023); the conduct of representatives of the press (II, 1630, 1631; III, 2627); the protection of papers in its files, especially when demanded by the courts (III, 2660-2664); the integrity of its Journal (II, 1363; III, 2620); the protection of its records (III, 2659); the accuracy of its documents (V, 7329) and messages (III, 2613); and the integrity of the processes by which bills are considered (III, 2597-2601, 2614; IV, 3383, 3388, 3478). High constitutional privilege to declare office of Speaker vacant (Mar. 19, 1910; 2d sess 61st Cong., p. 3437). Not privileged to amend Rules of House. Speaker Cannon sustained by House by vote of 235 to 53 (Record, 3d sess. 61st Cong., p. 686). This decision overrules decision of March 19, 1910, holding such motion privileged.

The privilege of the Member rests primarily on the Constitution, which § 655. **Privilege of the Member.** gives to him a conditional immunity from arrest; and an unconditional freedom of debate in the House (III, 2670). A menace to the personal safety of Members from an insecure ceiling in the Hall was held to involve a question of the highest privilege (III, 2685); and an assault on a Member within the Capitol when the House was not in session, from a cause not connected with the Member's representative capacity, was also held to involve a question of privilege (II, 1624). But there has been doubt as to the right of the House to interfere for the protection of Members who, outside the Hall, get into difficulties not connected with their official duties (II, 1277; III, 2678;

RULES OF THE HOUSE OF REPRESENTATIVES.

§§ 656, 657.

Rule IX.

footnote). Charges against the conduct of a Member are held to involve privilege when they relate to his representative capacity (III, 1828-1830, 2716); but when they relate to conduct at a time before he became a Member they have not been entertained as of privilege (II, 1287; III, 2691, 2723, 2725). A distinction has been drawn between charges made by one Member against another in a newspaper and the same when made on the floor (III, 1827, 2691, 2717). Charges made in newspapers against Members in their representative capacities involve privilege (III, 1832, 2694, 2696-2699, 2703, 2704), even though the names of individual Members be not given (III, 1831, 2705, 2709). But vague charges in newspaper articles (III, 2711), criticisms (III, 2712-2714), or even misrepresentations of the Members' speeches or acts (III, 2707, 2708) have not been entertained.

The clause of the rule giving questions of privilege precedence of all other questions except a motion to adjourn is a recognition of a principle always well understood in the House, for it is an axiom of the parliamentary law that such a question "supersedes the consideration of the original question, and must be first disposed of" (III, 2522, 2523). As the business of the House began to increase it was found necessary to give certain important matters a precedence by rule, and such matters are called "privileged questions." But as they relate merely to the order of business under the rules, they are to be distinguished from "questions of privilege" which relate to the safety or efficiency of the House itself as an organ for action (III, 2718). It is evident, therefore, that a question of privilege takes precedence over a matter merely privileged under the rules (III, 2526-2530; V, 6454). So also certain matters of business, arising under provisions of the Constitution mandatory in nature, have been held to have a privilege which supersedes the rules establishing the order of business, as bills providing for census or apportionment (I, 305-308), bills returned with the objections of the President (IV, 3530-3536), propositions of impeachment (III, 2045-2048, 2051, 2398), and questions incidental thereto (III, 2401, 2418; V, 7261), matters relating to the count of the electoral vote (III, 2573-2578), and resolutions relating to adjournment and recess of Congress (V, 6698, 6701-6706). But the ordinary rights and functions of the House under the Constitution are exercised in accordance with the rules without precedence as matters of privilege (III, 2567).

A question of privilege may interrupt the reading of the Journal (II, 1630), or the consideration of a bill under a special order (III, § 657. Precedence of questions of privilege 2524, 2525), or a proposition to suspend the rules (III, as related to pending 2553), or the consideration of a matter on which the business. previous question has been ordered (III, 2532). While a question of privilege is pending a message of the President is received

RULES OF THE HOUSE OF REPRESENTATIVES.

Rule X.

§§ 658-661.

(V, 6640-6642), but is read only by unanimous consent (V, 6639). A motion to reconsider may also be entered but may not be considered (V, 5673-5676). Only one question of privilege may be pending at a time (III, 2533). In general one question of privilege may not take precedence over another (III, 2534, 2552, 2581).

When a Member proposes merely to address the House on a question of personal privilege, and does not bring up a matter affecting the efficiency or integrity of the House as an organ for action, the practice as to precedence is somewhat different. Thus, a Member rising to a question of personal privilege may not interrupt a call of the yeas and nays (V, 6051, 6052, 6058, 6059) or take from the floor another Member who has been recognized for debate (V, 5002), but he may interrupt the ordinary legislative business (III, 2531).

During a call of the House in the absence of a quorum only such questions of privilege may be presented as relate to the immediate proceedings (III, 2545). A question of privilege may be raised in Committee of the Whole as to a matter occurring in that committee (III, 2540-2544), yet a breach of privilege occurring in Committee of the Whole relates to the dignity of the House and is so treated (II, 1657). A proposition of privilege may lose its precedence by association with a matter not of privilege (III, 2551; V, 5890).

Whenever it is asserted on the floor that the privileges of the House are invaded, the Speaker entertains the question (II, 1501), and common fame has been held sufficient basis for raising a question (III, 2538, 2701); a telegraphic dispatch may also furnish a basis (III, 2539). But a Member may not, as a matter of right, require the reading of a book or paper on suggesting that it contains matter infringing on the privileges of the House (V, 5258). In presenting a question of personal privilege the Member is not required in the first instance to offer a motion, but he must take this preliminary step in raising a question of general privileges (III, 2546, 2547).

RULE X.

OF COMMITTEES.

§ 661. Election of standing committees.

There shall be elected by the House, at the commencement of each Congress, the following standing committees, viz:

Prior to Sixty-second Congress the Speaker appointed standing committees.

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§ 662.

Rule X.

§ 662. Names and
numbers of the
standing
committees.

1. * * * On Elections, three committees, to consist of 9 members each, to be called No. 1, No. 2, and No. 3, respectively.

2. On Ways and Means, to consist of 21 members.

3. On Appropriations, to consist of 21 members.

4. On the Judiciary, to consist of 21 members.

5. On Banking and Currency, to consist of 21 members.

6. On Coinage, Weights, and Measures, to consist of 18 members.

7. On Interstate and Foreign Commerce, to consist of 21 members.

8. On Rivers and Harbors, to consist of 21 members.

9. On the Merchant Marine and Fisheries, to consist of 21 members.

10. On Agriculture, to consist of 21 members.

11. On Foreign Affairs, to consist of 21 members.

12. On Military Affairs, to consist of 21 members.

13. On Naval Affairs, to consist of 21 members.

14. On the Post Office and Post Roads, to consist of 21 members.

15. On the Public Lands, to consist of 21 members.

16. On Indian Affairs, to consist of 19 members.

17. On the Territories, to consist of 16 members.

18. On Insular Affairs, to consist of 21 members.

19. On Railways and Canals, to consist of 14 members.

20. On Mines and Mining, to consist of 14 members.

21. On Public Buildings and Grounds, to consist of 17 members.

22. On Education, to consist of 15 members.

23. On Labor, to consist of 13 members.

24. On Patents, to consist of 14 members.

25. On Invalid Pensions, to consist of 16 members.

26. On Pensions, to consist of 15 members.

27. On Claims, to consist of 16 members.

28. On War Claims, to consist of 15 members.

29. On the District of Columbia, to consist of 21 members.

30. On Revision of the Laws, to consist of 13 members.

31. On Reform in the Civil Service, to consist of 13 members.

32. On Election of President, Vice President, and Representatives in Congress, to consist of 13 members.

33. On Alcoholic Liquor Traffic, to consist of 11 members.

34. On Irrigation of Arid Lands, to consist of 13 members.

35. On Immigration and Naturalization, to consist of 15 members.

37. On Expenditures in the State Department, to consist of 7 members.

38. On Expenditures in the Treasury Department, to consist of 7 members.

39. On Expenditures in the War Department, to consist of 7 members.

40. On Expenditures in the Navy Department, to consist of 7 members.

41. On Expenditures in the Post Office Department, to consist of 7 members.

42. On Expenditures in the Interior Department, to consist of 7 members.

43. On Expenditures in the Department of Justice, to consist of 7 members.

44. On Expenditures in the Department of Agriculture, to consist of 7 members.

45. On Expenditures in the Department of Commerce and Labor, to consist of 7 members.

46. On Expenditures on Public Buildings, to consist of 7 members.

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§ 663.

47. On Rules, to consist of 11 members, of which the Speaker shall not be a member.

48. On Accounts, to consist of 11 members.

49. On Mileage, to consist of 5 members.

50. On the Census, to consist of 16 members.

51. On Industrial Arts and Expositions, to consist of 16 members.

Also the following joint standing committees, viz:

52. On the Library, to consist of 5 members.

53. On Printing, to consist of 3 members.

54. On Enrolled Bills, to consist of 7 members.

55. On the Disposition of Useless Executive Papers, to consist of 2 members.

§ 663. Speaker appoints select and conference committees.

2. The Speaker shall appoint all select and conference committees which shall be ordered by the House from time to time.

This portion of the rule relating to select committees was adopted in 1880, and the provision relating to conference committees in 1890, although the practice of leaving the appointment of conference committees to the Speaker had existed from the earliest years of the House's history (IV, 4470).

Prior to 1880 the House might take from the Speaker the appointment of a select committee (IV, 4448, 4470), and on several occasions did so in fact (IV, 4471-4476).

In the earlier usage of the House the Member moving a select committee was appointed its chairman (II, 1275; III, 2342; IV, 4514-4516); but except for matters of ceremony, the inconvenience and even impropriety of the usage has caused it often to be disregarded in modern practice (IV, 4517-4523, 4671).

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§§ 664-666.

Rule X.

3. At the commencement of each Congress the House shall elect as chairman of each standing committee one of the members thereof; in the temporary absence of the chairman the member next in rank in the order named in the election of the committee, and so on, as often as the case shall happen, shall act as chairman; and in case of a permanent vacancy in the chairmanship of any such committee the House shall elect another chairman. (Rule adopted 62d Cong.)

§ 664. Selection of chairman of committee.

4. All vacancies in standing committees of the House shall be filled by election by the House. (Rule adopted 62d Cong.)

§ 665. Committee vacancies.

5. The chairman shall appoint the clerk or clerks or other employees of his committee, subject to its approval, who shall be paid at the public expense, the House having first provided therefor.

§ 666. Clerk of committee.

This rule was adopted in 1838 and amended in 1880 (IV, 4533). Amended 1st sess. 61st Cong.

Annual clerks of committees are authorized by a resolution reported by the Committee on Accounts and agreed to by the House (IV, 4534), and session clerks are assigned to committees by similar action (IV, 4535).

There is no legal power to fill a vacancy in the clerkship of a committee after one Congress has expired and before the next House has been organized (IV, 4539).

An assault upon the clerk of a committee within the walls of the Capitol was held to be a breach of privilege (II, 1629).

The pay of clerks has been the subject of several decisions (IV, 4536-4538).

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§§ 667-669.

RULE XI.

POWERS AND DUTIES OF COMMITTEES.

All proposed legislation shall be referred to the committees named in the preceding rule, as follows, viz: Subjects relating—

§ 667. Jurisdiction of committees.

This rule is mandatory on the Speaker in referring public bills and on Members in referring private bills and petitions under Rule XXII, but when the House itself refers a bill it may send it to any committee without regard to the rules of jurisdiction (IV, 4375; V, 5527) and jurisdiction is thereby conferred (IV, 4362-4364). A bill may not be divided among two or more committees, although it may contain matters properly within the jurisdiction of several committees (IV, 4372). A bill may be originated by a committee having jurisdiction of a subject by means of a petition (IV, 3365) properly referred (IV, 4361). It has generally been held that a committee may not report a bill whereof the subject-matter has not been referred to it by the House (IV, 4355-4360). Where a House bill is returned from the Senate with a substitute amendment relating to a new and different subject, the reference should nevertheless be to the committee having jurisdiction of the original bill (IV, 4373, 4374). The erroneous reference of a public bill under this rule, if it remain uncorrected, gives jurisdiction (IV, 4365-4371), but such is not the case with a private bill or petition (IV, 3364, 4382-4389) unless the reference be made by action of the House itself (IV, 4390, 4391). A point of order as to the reference of a private bill is good when the bill comes up for consideration, either in the House or in Committee of the Whole (IV, 4382-4389).

1. To the election of Members—to the respective Committees on Elections.

§ 668. Elections.

The Committee on Elections was established as a standing committee in 1794, but there had been a select committee from the first organization of the House. In 1895 it was divided into three committees (IV, 4019).

The Committee on Elections has considered questions relating to credentials (I, 764, footnote) and qualifications (I, 426; § 669. II, 946).

2. To the revenue and the bonded debt of the United States—to the Committee on Ways and Means.

§ 670. Ways and Means.

As a select committee Ways and Means dates from 1789. It was made a standing committee in 1802. Originally it considered both revenue and appropriations; but in 1865 the appropriation bills were given to the Committee on Appropriations and certain other bills to the Committee on Banking and Currency (IV, 4020).

The revenue jurisdiction extends to such subjects as transportation of dutiable goods, collection districts, ports of entry and delivery (IV, 4026), customs unions, reciprocity treaties (IV, 4021), seal herds and other revenue-producing animals of Alaska (IV, 4025), revenue relations of the United States with Porto Rico and the Philippines (IV, 4025), and the revenue bills relating to agricultural products generally, excepting oleomargarine (IV, 4022).

The committee has jurisdiction of subjects relating to the Treasury of the United States and the deposit of the public moneys (IV, 4028), but it failed to make good a claim to the subjects of "national finances" and "preservation of the Government credit" (IV, 4023).

The committee also reports the resolutions distributing the President's annual message (IV, 4030), and resolutions for final adjournments of Congress and recesses (IV, 4031).

3. To appropriation of the revenue for the support of the Government as herein provided, viz, for legislative, executive, and judicial expenses; for sundry civil expenses; for fortifications and coast defenses; for the District of Columbia; for pensions; and for all deficiencies—to the Committee on Appropriations.

§ 671. Appropriations.

This committee was established in 1865, when all the general appropriation bills were confided to its care. In 1885 a portion of the bills were distributed to other committees. In 1890 the subject of "coast defenses" was added to the fortifications bill (IV, 4032).

While this committee has authority to report appropriations, the power to report legislation relating thereto belongs to other committees (IV, 4033). The services for the departments in Washington, except the Agricultural

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Department, and a wide range of other subjects relating to the legislative, executive, and judicial branches of the Government belong to this committee (IV, 4033). Appropriations for barracks and quarters for troops of the Seacoast Artillery (IV, 4049), for field guns and their appurtenances (IV, 4042-4044), for submarine mines and torpedoes for coast defenses (IV, 4048), and for the equipment of arsenals and armories (IV, 4045-4047) are made by the Committee on Appropriations. Appropriations for ocean and lake surveys have been a subject of contention between the Appropriations and Naval Affairs Committees (IV, 4040, 4041). Expenditures in fulfillment of contracts for river and harbor work are reported by the Appropriations Committee (IV, 4036). It also reports awards of money to foreign nations in pursuance of treaties for the adjustment of claims or as acts of grace (IV, 4050, 4053).

4. To judicial proceedings, civil and criminal § 672. Judiciary. law—to the Committee on the Judiciary.

This committee dates from 1813 (IV, 4054).

It considers charges against judges of the United States courts (IV, 4062), legislative propositions relating to the service of the Department of Justice (IV, 4067), bills relating to local courts in the District of Columbia, Alaska, and the Territories (IV, 4068), the establishment of a court of patent appeals (IV, 4075), relations of the courts to labor and corporations (IV, 4072), crimes, penalties, extradition (IV, 4069), construction and management of national penitentiaries (IV, 4070), matters relating to trusts and corporations (IV, 4057, 4059, 4060), claims of States against the United States (IV, 4080), general legislation relating to international and other claims (IV, 4078, 4079, 4081), bills relating to the office of President (IV, 4077), to the flag (IV, 4055), holidays and celebrations (IV, 4073), bankruptcy (IV, 4065), removal of political disabilities (IV, 4058), interstate commerce relations of traffic in intoxicating liquors (IV, 4061), mutiny and willful destruction of vessels (IV, 4145), counterfeiting (IV, 4071), settlement of State and Territorial boundary lines (IV, 4060), meeting of Congress and attendance of Members and their acceptance of incompatible offices (IV, 4077). This committee also has a general but not exclusive jurisdiction over joint resolutions proposing amendments to the Constitution (IV, 4056). It also reports on important questions of law relating to subjects naturally within the jurisdiction of other committees (IV, 4063).

The Judiciary Committee does not report appropriations of money.

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§§ 673-675.

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§ 673. Banking
and currency.

5. To banking and currency—to the Committee on Banking and Currency.

This committee was established in 1865 (IV, 4082).

It has reported on subjects relating to the strengthening of public credit, issues of notes and taxation and redemption thereof (IV, 4084), propositions to maintain the parity of the money of the United States (IV, 4089), the issue of silver certificates as currency (IV, 4087, 4088), national banks and current deposits of public money (IV, 4083), the incorporation of an international bank (IV, 4086), and subjects relating to the Freedman's Bank (IV, 4085).

It does not report appropriations of money.

§ 674. Coinage,
weights, and
measures.

6. To coinage, weights, and meas- ures—to the Committee on Coinage, Weights, and Measures.

This committee was established in 1864 (IV, 4090).

It has reported on bills defining and fixing the standard of value, regulating coinage and exchanges of coin (IV, 4095), coinage of silver and purchase of bullion (IV, 4093), Hawaiian coinage (IV, 4092), mints and assay offices (IV, 4094), the standardizing bureau and metric system (IV, 4091).

It does not report appropriations of money.

§ 675. Interstate
and foreign
commerce.

7. To commerce, life-saving service, and light- houses, other than appropriations for life-saving service and lighthouses— to the Committee on Interstate and Foreign Commerce.

This committee dates from 1795 (IV, 4096).

It formerly reported the river and harbor appropriation bill, but in 1883, after the wording of the rule had been adopted, the Committee on Rivers and Harbors was created to care for the river and harbor bill (IV, 4096). So this committee has no jurisdiction over appropriations, although the words of the rule imply that it may appropriate for commerce.

Bills relating to the Department of Commerce and Labor and the Interstate Commerce Commission (IV, 4098) are reported by this committee.

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§§ 676-678.

The Committee on Interstate and Foreign Commerce has general jurisdiction of bills affecting domestic and foreign commerce, except such as may affect the revenue (IV, 4097), of bills relating to bills of lading, entering and clearing of vessels, liability of shipowners (IV, 4137), regulation of harbors, and the placing of works such as pipes and tunnels likely to obstruct navigation (IV, 4102), privilege of foreign vessels in American ports, contracts in export trade, wrecks in international waters (IV, 4144), authorization of light ships, fog signals (V, 4104), revenue cutters, and auxiliary craft of the customs service (IV, 4108), ocean derelicts, lumber rafts, hydrographic office charts (IV, 4105), life-saving service and refuge stations in the Arctic regions (IV, 4107).

Bills relating to ocean cables (IV, 4106), to a canal between the Atlantic and Pacific, and to a limited extent the general subjects of canals in the United States (IV, 4103) are also within its jurisdiction.

It also has jurisdiction of bills authorizing the construction of marine hospitals and the acquisition of sites therefor (IV, 4110), the general subjects of quarantine and the establishment of quarantine stations (IV, 4109), health, spread of leprosy and other contagious diseases, international congress of hygiene, etc. (IV, 4111).

Bills declaring as to whether or not streams are navigable and for preventing or regulating hindrances to navigation (IV, 4101), such as bridges (IV, 4099) and dams, except such dams as are a part of river improvements (IV, 4100), belong to the jurisdiction of this committee.

The Committee on Interstate and Foreign Commerce considers bills regulating railroads in their interstate commerce relations (IV, 4114), bills relating to commercial travelers as agents of interstate commerce and the branding of articles going into such commerce (IV, 4115), the prevention of the carriage of indecent and harmful pictures or literature (IV, 4116), the adulteration, misbranding, etc., of foods and drugs (IV, 4112), and protection of game through prohibition of interstate transportation (IV, 4117). The regulation of exportation of live stock, meat, and other agricultural products have also been to a certain extent within the jurisdiction of this committee (IV, 4113).

§ 678. Rivers and harbors.

8. To the improvements of rivers and harbors—to the Committee on Rivers and Harbors.

This committee was established in 1883 (IV, 4118).

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§ 679.

Rule XI.

This rule does not mention the committee's right to report the river and harbor appropriation bill, but the authority is implied by section 61 of Rule XI (IV, 4621) and is established by long usage. The river and harbor bill is not one of the general appropriation bills (IV, 4219) and is not subject to their restrictions as to legislation (IV, 3897-3903). A subject of which the Rivers and Harbors Committee has jurisdiction may be reported in the river and harbor bill (IV, 4119). The committee has reported on public works for the benefit of navigation, on the use of water power on improved streams (IV, 4125), and on an international arrangement as to the use of water at the outlet of the Great Lakes (IV, 4126). But a provision relating to a commission to investigate the conditions and uses of waters adjacent to an international boundary line (IV, 4165), as well as propositions for the construction of canals (IV, 4219, 4220) and for irrigation (IV, 4128), have been held not to be within the jurisdiction of the committee.

§ 679. Merchant
marine and
fisheries.

9. To the merchant marine and fisheries—to the Committee on the Merchant Marine and Fisheries.

This committee was established in 1887 (IV, 4129).

The jurisdiction of this committee includes the general subjects of shipbuilding, admission of foreign-built ships, registering and licensing of vessels (IV, 4134), including pleasure yachts (IV, 4143), tonnage taxes and fines and penalties on vessels (IV, 4131), the extension and increase of the merchant marine (IV, 4138), navigation and the laws relating thereto (IV, 4130), pilotage (IV, 4136), the naming and measuring of vessels (IV, 4132), rules and international arrangements to prevent collisions at sea (IV, 4135), and the shipping, wages, treatment (IV, 4140), and health of sailors (IV, 4141). The committee has also exercised a general but less exclusive jurisdiction over subjects relating to inspection of steam vessels as to hulls and boilers (IV, 4133), lights and signals (IV, 4135), and protection from fire on vessels (IV, 4141), collisions, coasting districts, marine schools, etc. (IV, 4146), regulation of small vessels propelled by naphtha, etc., and transportation of inflammable substances on passenger vessels (IV, 4142), the titles, conduct, and licensing of officers of vessels (IV, 4139), and regulation of shipping in Hawaii and even in the Philippines (IV, 4130).

This committee has no authority to report appropriations.

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Rule XI.

§§ 680, 681.

10. To agriculture and forestry—to the Committee on Agriculture, who shall receive the estimates and report the appropriations for the Agricultural Department.

This committee was established in 1820. In 1880 the subject of forestry was added to its jurisdiction, and at the same time the authority to receive the estimates and report appropriations was conferred (IV, 4149).

It has had jurisdiction of bills for establishing and regulating the Department of Agriculture (IV, 4150), for inspection of live stock and meat products, regulation of animal industry, diseases of animals (IV, 4154), adulteration of seeds, insect pests, protection of birds and animals in forest reserves (IV, 4157), the improvement of the breed of horses, even with the cavalry service in view (IV, 4158).

The committee, having in charge the general subject of forestry, has reported bills relating to timber, and forest reserves other than those created from the public domain (IV, 4160).

It has also exercised jurisdiction of bills relating to agricultural colleges and experiment stations (IV, 4152), the Weather Bureau (IV, 4151), incorporation of agricultural societies (IV, 4159), establishment of a highway commission (IV, 4153), and to discourage fictitious and gambling transactions in farm products (IV, 4161).

The committee has, by direct action of the House, secured jurisdiction of bills imposing an internal-revenue tax on oleomargarine (IV, 4156), and has also had a general but not exclusive jurisdiction of bills relating to imitation dairy products, manufacture of lard, etc. (IV, 4156). But this jurisdiction of revenue matters is exceptional (IV, 4155).

11. To the relations of the United States with foreign nations, including appropriations therefor—to the Committee on Foreign Affairs.

§ 681. Foreign
affairs.

This committee was established in 1822, and the authority to report appropriations was conferred in 1885 (IV, 4162).

It has a broad jurisdiction over foreign relations, including bills to establish boundary lines between the United States and foreign nations, to determine naval strength, and regulate bridges and dams on international waters (IV, 4166), for the protection of American citizens abroad

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§ 682.

Rule XI.

and expatriation (IV, 4169), to maintain the treaty rights of American fishermen (IV, 4172), for extradition with foreign nations, international arbitration, relating to violation of neutrality (IV, 4178a), international conferences and congresses (IV, 4177), the incorporation of the American National Red Cross and protection of its insignia (IV, 4173), immigration of Chinese and Japanese (IV, 4172), intervention abroad and declarations of war (IV, 4164), affairs of the consular service, including acquisition of land and buildings for legations in foreign capitals (IV, 4163), creation of courts of the United States in foreign countries (IV, 4167), treaty regulations as to protection of fur seals (IV, 4170).

The committee has also considered measures for fostering commercial intercourse with foreign nations and for safeguarding American business interests abroad (IV, 4175), and even the subjects of commercial treaties and reciprocal arrangements (IV, 4174), although in later practice the Committee on Ways and Means has considered such matters (IV, 4021). Foreign Affairs has exercised a general but not exclusive jurisdiction over legislation relating to claims having international relations (IV, 4168). The committee also exercised a preliminary jurisdiction as to the canal between the Atlantic and Pacific oceans (IV, 4177).

12. To the military establishment, the militia, and
the public defense, including the appro-
priations for their support and for that of
the Military Academy—to the Committee on Military
Affairs.

§ 682. Military
affairs.

This committee was created in 1822, and in 1885 the authority to report appropriations was conferred (IV, 4179). It reports two general appropriation bills, one for the Army and the other for the Military Academy (IV, 4180).

To this committee belongs the jurisdiction of legislative propositions relating to the War Department; but it does not report appropriations for salaries therein. (IV, 4181.) It also reports legislation for national soldiers' homes (IV, 4184), military parks and battlefields (IV, 4187), and national cemeteries (IV, 4186); but appropriations therefor are reported by the Committee on Appropriations (IV, 4033, 4051). Appropriations for fire control and direction apparatus for field artillery are within the jurisdiction of Military Affairs. (IV, 4184.) In a few instances this committee has reported general bills providing for the adjustment of claims arising out of war. (IV, 4188.)

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§§ 683-686

13. To the naval establishment, including the appropriations for its support—to the
§ 683. Naval affairs. Committee on Naval Affairs.

This committee was created in 1822, and in 1885 the jurisdiction of appropriations was given to it. It reports legislation and appropriations for all branches of the naval service except for the administrative and clerical salaries in the Navy Department at Washington (IV, 4189).

14. To the post-office and post-roads, including appropriations for their support—to the
§ 684. Post-office and post-roads. Committee on the Post-Office and Post-Roads.

This committee was created in 1808, and it was empowered to report appropriations in 1885 (IV, 4190).

It reports appropriations for the postal service, including the Railway Mail Service (IV, 4191), and has general jurisdiction of subjects relating to railway, ocean, and pneumatic-tube service (IV, 4192), postal savings banks, and postal telegraphy (IV, 4193).

15. To the lands of the United States and private claims to land—to the Committee on
§ 685. Public lands. the Public Lands.

This committee was created in 1805 (IV, 4194).

It reports on subjects relating to the mineral resources of the public lands (IV, 4202), forfeiture of land grants and alien ownership (IV, 4201), public lands of Alaska (IV, 4196), forest reserves (IV, 4197), and national parks created out of the public domain (IV, 4199), preservation of prehistoric ruins and objects of interest on the public domain (IV, 4199), the reservation at Arkansas Hot Springs (IV, 4200), and sometimes to projects of general legislation relating to various classes of land claims (IV, 4203).

16. To the relations of the United States with the Indians and the Indian tribes, including appropriations therefor—to the Com-
§ 686. Indian affairs. mittee on Indian Affairs.

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§§ 687-691.

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This committee was created in 1821, and in 1885 was authorized to report appropriations (IV, 4204).

It has a broad jurisdiction of subjects relating to the care, education, and management of the Indians, including the care and allotment of their lands (IV, 4205). It also reports both general and special bills as to claims which are paid out of Indian funds (IV, 4206).

17. To territorial legislation, the revision thereof,
and affecting Territories or the admis-
§ 687. Territories. sion of States—to the Committee on the
Territories.

This committee was established in 1825 (IV, 4208).

It has also a general jurisdiction of subjects relating to the district of Alaska (IV, 4211).

This committee does not report appropriations.

18. To all matters (excepting those affecting the
revenue and the appropriations) per-
§ 688. Insular taining to the islands which came to the
affairs. United States through the treaty of 1899 with Spain,
and to Cuba—to the Committee on Insular Affairs.

This committee was created in 1899 (IV, 4213).

Although the rule includes subjects relating to Cuba within the jurisdic-
tion of this committee, the House has by formal action sent them to the
Committee on Foreign Affairs (IV, 4215). The Com-
§ 689. mittee on Insular Affairs has reported on a general
provision for dealing with a certain class of claims in the Philippine
Islands (IV, 4216).

This committee does not report appropriations.

19. To railways and canals—to the
Committee on Railways and Canals.
§ 690. Railways
and canals.

§ 691. This committee was established in 1831 (IV, 4217).

It has retained a general jurisdiction of the subject of canals, but in practice has lost its jurisdiction as to railways (IV, 4114, 4218). It has no authority to report appropriations.

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Rule XI.

§§ 692-695.

§ 692. Mines and mining.

20. To the mining interests—to the Committee on Mines and Mining.

This committee was established in 1865 (IV, 4223).

It has reported bills relating to mineral-land laws and claims and entries thereunder (IV, 4228), to the Geological Survey (IV, 4224), to establish departments or bureaus of mines and geology (IV, 4225), to alien ownership of mineral lands (IV, 4227), to establishment of schools of mines and mining experiment stations (IV, 4226), to the welfare of men working in mines (IV, 4229), and to mining débris in California (IV, 4230).

This committee reports no appropriations.

§ 698. Public buildings and grounds.

21. To the public buildings and occupied or improved grounds of the United States, other than appropriations therefor—to the Committee on Public Buildings and Grounds.

This committee was established in 1837 (IV, 4231).

It has jurisdiction of bills authorizing the purchase of sites and construction of post-offices, custom-houses, and federal court-houses in the various portions of the country, government buildings within the District of Columbia (IV, 4233), including the Government Printing Office (IV, 4233). Subjects relating generally to the Capitol building, especially the House wing (IV, 4238), including the restaurant and kitchen, have been considered by this committee (IV, 4237). It has also considered subjects relating to the public reservations and parks within the District of Columbia, including Rock Creek Park (IV, 4236) and the Zoological Park (IV, 4235). Legislation relating to the office of Supervising Architect of the Treasury has also been within this jurisdiction (IV, 4232).

This committee does not report appropriations.

§ 695. Education.

22. To education—to the Committee on Education.

This committee was established in 1867 (IV, 4242).

It reports legislative propositions, but not appropriations.

§ 696. Labor.

23. To and affecting labor—to the Committee on Labor.

This committee was established in 1883 (IV, 4244).

It has reported on bills relating to arbitration as a means of settling labor troubles (IV, 4246), to wages and hours of labor (IV, 4247), to convict labor and the entry of goods made by convicts into interstate commerce (IV, 4248), to the regulation or prevention of importation of foreign laborers under contract (IV, 4249), to labor employed in various branches of the government service (IV, 4250), and rarely to classes of claims under the eight-hour law (IV, 4251).

This committee does not report appropriations.

§ 698. Patents.

24. To patents, copyrights, and trade-marks—to the Committee on Patents.

This committee was created in 1837 (IV, 4254).

It has jurisdiction of general and special legislation relating to copyrights, although its title to the subject of international copyright has been contested by Judiciary (IV, 4257). It also reports bills relating to the general subject of trade-marks, including punishment for the counterfeiting thereof (IV, 4256), patent law, jurisdiction of courts in patent cases, the Patent Office, including a building therefor (IV, 4255), and the holding of an international patent conference (IV, 4255).

This committee does not report appropriations.

§ 699. Invalid pensions.

25. To the pensions of the civil war—to the Committee on Invalid Pensions.

This committee was first established in 1813 as a Committee on Pensions and Revolutionary Claims. Its name and jurisdiction have been changed to suit varying conditions (IV, 4258). It reports general and special bills authorizing pensions, but the actual appropriations therefor are reported by the Committee on Appropriations (IV, 4259).

§ 700. Pensions.

26. To the pensions of all the wars of the United States, other than the civil war—to the Committee on Pensions.

This committee is an offshoot from the old Committee on Pensions and Revolutionary Claims, which was established in 1813 (IV, 4258, 4260). It reports general and special bills authorizing pensions, but does not report appropriations (IV, 4261).

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Rule XI.

§§ 701-704.

27. To private and domestic claims and demands,
other than war claims, against the
§ 701. Claims. United States—to the Committee on
Claims.

This committee was established in 1794 (IV, 4262).

It reports special bills making appropriations. Within its jurisdiction are subjects relating to the redemption of lost bonds, checks, and coupons (IV, 4266), and French spoliation claims (IV, 4264, 4265). While ordinarily reporting only special bills for the relief of individuals and corporations, it has reported at times general bills relating to disposition of classes of claims (IV, 4263), and public bills for adjusting accounts between the United States and the several States and Territories (IV, 4267).

28. To claims arising from any war in which the
United States has been engaged—to
§ 702. War claims. the Committee on War Claims.

This committee is an offshoot of the old Committee on Pensions and Revolutionary Claims, established in 1813. Its present
§ 703. History of committee. name was adopted in 1873 (IV, 4269).

Within the limits of its jurisdiction it may report bills making appropriations (IV, 4269). While reporting generally on special bills for settlement of claims of individuals and corporations, it has reported also on the war claims of States and Territories against the United States (IV, 4271), and on general bills providing for the adjudication of classes of war claims (IV, 4270).

29. To the District of Columbia, other than appro-
priations therefor—to the Committee
§ 704. District of Columbia. on the District of Columbia.

This committee was established in 1808 (IV, 4276).

It reports bills proposing legislation as to the general municipal affairs of the District (IV, 4277), relating to health, sanitary and quarantine regulations (IV, 4284), holidays (IV, 4283), protection of fish and game (IV, 4282), regulation of sale of intoxicating liquors (IV, 4280), adulteration of food, drugs, etc. (IV, 4280), taxes and tax sales (IV, 4279), insurance (IV, 4278); bills for preserving public order at times of inaugurations (IV, 4292), the Government Hospital for the Insane (IV, 4285), harbor regulations and the

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bridge over the Eastern Branch (IV, 4286), executors, administrators, wills, and divorce (IV, 4289), police and juvenile courts and justices of the peace (IV, 4290), incorporation and organization of societies (IV, 4288), municipal code and amendments to the criminal and corporation laws (IV, 4287). The jurisdiction of this committee as to matters affecting the higher courts of the District has been exceptional rather than general (IV, 4291). This committee does not report appropriations.

§ 705. Revision of the laws.

30. To the revision and codification of the Statutes of the United States—to the Committee on the Revision of the Laws.

This committee was established in 1868 (IV, 4293).

It has reported codifications of laws (IV, 4294), but not usually as to mere changes of laws (IV, 4295). It does not report appropriations.

§ 706. Reform in the civil service.

31. To reform the civil service—to the Committee on Reform in the Civil Service.

This committee was created in 1893 (IV, 4296).

It has reported matters relating to the Civil Service Commission and alleged violations of the law (IV, 4298), and the status of officers, clerks, and employees of the civil branches of the Government (IV, 4297).

It does not report appropriations.

§ 707. Election of President, Vice-President, and Representatives in Congress.

32. To the election of the President, Vice-President, or Representatives in Congress—to the Committee on Election of President, Vice-President, and Representatives in Congress.

This committee was established in 1893 (IV, 4299).

It has reported on national election laws and the enforcement thereof (IV, 4301), changes in the law regulating the electoral count and resolutions regulating the actual count (IV, 4303), the succession to the office of President in case of his death, disability, etc. (IV, 4304), proposed constitutional amendments providing for election of Senators by the people, disqualification of polygamists as Representatives (IV, 4300), changes of the terms

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of Congress and the President, and the time of annual meeting of Congress (IV, 4302).

This committee does not report appropriations.

§ 708. **Alcoholic
liquor traffic.**

**33. To alcoholic liquor traffic—to the
Committee on Alcoholic Liquor Traffic.**

This committee was established in 1893 (IV, 4305).

It does not report appropriations.

§ 709. **Irrigation of
arid lands.**

**34. To the irrigation of arid lands—
to the Committee on Irrigation of Arid
Lands.**

This committee was established in 1893 (IV, 4307).

It does not report appropriations.

§ 710. **Immigration
and naturalization.**

**35. To immigration or naturalization—to the
Committee on Immigration and Natu-
ralization.**

This committee was established in 1893 (IV, 4309).

§ 711. **History of
committee.**

In addition to its general jurisdiction (IV, 4310, 4311)
it has reported authorizations for sites and buildings
for immigrant stations (IV, 4312).

It does not report appropriations.

§ 712. **Expenditures
in the several
departments.**

**36. The examination of the accounts and expendi-
tures of the several departments of the
Government and the manner of keeping
the same; the economy, justness, and
correctness of such expenditures; their conformity
with appropriation laws; the proper application of
public moneys; the security of the Government
against unjust and extravagant demands; retrench-
ment; the enforcement of the payment of moneys
due to the United States; the economy and accounta-**

bility of public officers; the abolishment of useless offices; the reduction or increase of the pay of officers, shall all be subjects within the jurisdiction of the nine standing committees on the public expenditures in the several departments, as follows:

37. In the Department of State—to the Committee on Expenditures in the State Department.

38. In the Treasury Department—to the Committee on Expenditures in the Treasury Department.

39. In the War Department—to the Committee on Expenditures in the War Department.

40. In the Navy Department—to the Committee on Expenditures in the Navy Department.

41. In the Post-Office Department—to the Committee on Expenditures in the Post-Office Department.

42. In the Interior Department—to the Committee on Expenditures in the Interior Department.

43. In the Department of Justice—to the Committee on Expenditures in the Department of Justice.

44. In the Department of Agriculture—to the Committee on Expenditures in the Department of Agriculture.

45. In the Department of Commerce and Labor—to the Committee on Expenditures in the Department of Commerce and Labor.

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46. On public buildings—to the Committee on Expenditures on Public Buildings.

The first of these committees were established in 1816, and others were added as new departments were created (IV, 4315).

They have reported bills relating to the efficiency and integrity of the public service (IV, 4320), leaves of absence of officers and clerks (IV, 4319), creation and abolition of offices (IV, 4318), and fees and salaries of officers and employees (IV, 4317). They may make investigations without specific direction from the House; but authority must be obtained of the House for compelling testimony (IV, 4316).

These committees do not report appropriations.

47. All proposed action touching the rules, joint rules, and order of business shall be referred to the Committee on Rules.

§ 718. Rules.

This committee, which had existed as a select committee from 1789, became a standing committee in 1880. The Speaker was first made a member of the committee in 1858 (IV, 4321), and ceased to be a member on March 19, 1910.

Primarily the jurisdiction of this committee is over propositions to make or change the rules (V, 6770, 6776), for the creation of committees (IV, 4322), and directing them to make investigations (IV, 4322-4324). It also reports resolutions relating to the hour of daily meeting and the days on which the House shall sit (IV, 4325), and orders relating to the use of the galleries during the electoral count (IV, 4327). It does not report appropriations.

Since 1883 the Committee on Rules has reported special orders providing times and methods for consideration of special bills or classes of bills, thereby enabling the House by majority vote to forward particular legislation, instead of being forced to use for the purpose the motion to suspend the rules, which requires a two-thirds vote (IV, 3152; V, 6870; for forms of, IV, 3238-3263).

§ 714. Special orders.

Special orders may still be made by suspension of the rules (IV, 3154) or by unanimous consent (IV, 3165, 3166), but it is not in order, by motion in the House, to provide that a subject be made a special order for a given date (IV, 3163), or to make a special order by a motion to postpone to a day certain (IV, 3164). But before the adoption of rules, and consequently before there is a rule as to the order of business, a Member may offer a special order for immediate consideration (V, 4971, 5450). A special order

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reported by the Committee on Rules must be agreed to by a majority vote of the House (IV, 3169).

It is not in order to move to postpone a special order providing for the consideration of a class of bills (V, 4958), but a bill which comes before the House by the terms of a special order merely assigning the day for its consideration may be postponed by a majority vote (IV, 3177-3182). A motion to rescind a special order is not privileged under the rules regulating the order of business (IV, 3173, 3174; V, 5323).

On March 19, 1910, amending rules held to be a privileged question, the House overruling decision of Speaker Cannon by vote of 182 to 162. (Record, 2d sess. 61st Cong., p. 342.)

On January 9, 1911, amending rules held not to be a privileged question. The House sustained Speaker Cannon by vote of 235 to 53. (Record, 3d sess. 61st Cong., p. 686.)

48. Touching the expenditure of the contingent fund of the House, the auditing and settling of all accounts which may be charged therein by order of the House—to the Committee on Accounts.

§ 715. Accounts.

This committee was established in 1803. The law provides that the Speaker shall, before the termination of the last session of a Congress, appoint three Members-elect of the next House as a temporary Committee on Accounts, to exercise such functions of the committee as may need to be exercised during the recess before the organization of the next House (IV, 4328).

The Committee on Accounts reports resolutions authorizing the employment of persons by the House (IV, 4333), including clerks for Members (IV, 4334) and committees (IV, 4331), and reporters of debates (V, 6960, 6961). The assignment of committee and other rooms in the House wing, custody of documents, etc., have been considered by this committee (IV, 4330). The rules also contemplate consideration of a class of claims by the Committee on Accounts (Rule XXI, 3; IV, 4380). It also considers subjects relating to accountability of the officers of the House (IV, 4329), and examines as to observance of the rule forbidding officers and employees of the House from being interested in claims (Rule XLIII; V, 7227). The statutes make it the duty of this committee to inquire into the enforcement of certain laws relating to employees of the House, and for this purpose it is empowered by law to send for persons and papers (V, 7233). The stat-

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§§ 716, 717.

utes also modify the authority of the committee over the expenditure of the contingent fund (V, 7236).

It does not report appropriations of money in the Treasury of the United States.

49. The ascertaining of the travel of Members of the House shall be made by the Committee on Mileage and reported to the Sergeant at Arms.

§ 716. Mileage.

This committee was established in 1837 (IV, 4336).

It does not report appropriations or, ordinarily, any other legislative propositions.

50. Touching the Library of Congress, statuary, and pictures—to the Joint Committee on the Library.

§ 717. Library.

This committee was established in 1802 by a law as a joint committee. In 1809 the two Houses by concurrent action supplemented the law, and in 1843 recognized it by joint rule. The joint rules having ceased to exist in 1876, the rules of the House recognized the committee in 1880. In 1902 a law increased the membership of the committee to five in each House (IV, 4337).

The statutes confer on the joint committee certain executive functions, as the acceptance or purchase of works of art for the Capitol and control of the Botanic Garden, and provide that its powers shall reside in the Senate portion in the recess after the expiration of a Congress (IV, 4337).

Aside from the executive functions of the joint committee, the House branch exercises functions as a standing committee of the House, and has a jurisdiction covering construction and care of the building of the Library of Congress, management of the Library (IV, 4339), purchase of books and manuscripts (IV, 4340), erection of monuments to the memory of individuals (IV, 4342), and in some instances on battlefields (IV, 4341), and the removal of the remains of distinguished persons (IV, 4345). The general affairs of the Smithsonian Institution and the incorporation of similar institutions are also within the jurisdiction of the House branch of this committee (IV, 4346).

Neither the joint committee nor the House branch reports appropriation bills.

All proposed legislation or orders touching printing shall be referred to the Joint Committee on Printing on the part of the House.

§ 718. Printing.

This committee was created by law in 1846. In 1880 it was recognized by rule. From time to time various administrative functions have been conferred by law on this joint committee, relating to the general supervision of the printing; procuring of paper and other supplies; control of arrangement, style, bulk, and indexing of the Congressional Record; supervision of the printing of the Congressional Directory; editing, indexing, and binding of documents, etc. (VI, 4347).

In addition to the executive duties of the joint committee, the House branch exercises legislative functions, reporting resolutions and bills relating to printing, propositions to correct the Congressional Record (IV, 4349), and in infrequent cases bills relating to the pay of employees in the Government Printing Office (IV, 4348).

Neither the joint committee nor the House branch report appropriations.

§ 719. Enrolled bills.

52. The enrollment of engrossed bills—to the Joint Committee on Enrolled Bills.

This committee was established in 1789 by a joint rule of the two Houses. This rule lapsed in 1876 with the other joint rules; but in 1880 the rules of the House were amended so as to recognize the joint committee (IV, 4350, 4416).

Each branch of the committee makes comparisons of bills of its own House for enrollment (IV, 3440) and the two cooperate in the interchange of bills for signature.

This committee does not report legislation or appropriations.

53. All proposed legislation concerning the disposition of useless executive papers—to the Joint Committee on Disposition of Useless Executive Papers.

Useless papers.

54. All proposed legislation concerning the census and the apportionment of Representatives—to the Committee on the Census.

§ 720. Census.

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§§ 721, 722.

This committee was established as a standing committee in 1901 (IV, 4351).

It has considered the abridgment of the elective franchise with reference to apportionment, and bills relating to the collection of statistics (IV, 4352).

It does not report appropriations.

55. All matters (excepting those relating to the revenue and appropriations) referring to proposed expositions—to the Committee on Industrial Arts and Expositions.

§ 721. Industrial
arts and
expositions.

This committee was established in 1901 (IV, 4353).

It does not report appropriations.

56. The following-named committees shall have leave to report at any time on the matters herein stated, viz: The Committee on Rules, on rules, joint rules, and order of business; the Committee on Elections, on the right of a Member to his seat; the Committee on Ways and Means, on bills raising revenue; the committees having jurisdiction of appropriations, the general appropriation bills; the Committee on Rivers and Harbors, bills for the improvement of rivers and harbors; the Committee on the Public Lands, bills for the forfeiture of land grants to railroad and other corporations, bills preventing speculation in the public lands, and bills for the reservation of the public lands for the benefit of actual and bona fide settlers; the Committee on the Territories, bills for the admission of new States; the Committee on Enrolled Bills, enrolled bills; the Committee on Invalid Pensions, general pension bills; the Committee on Printing, on all matters referred to them of printing for the use of the House or two

§ 722. Privileged
reports of
committees.

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§§ 723, 724.

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Houses; and the Committee on Accounts, on all matters of expenditure of the contingent fund of the House.

The beginnings of this rule appear as early as 1812, but it was in 1880 that the various provisions were consolidated in one rule. At the time these privileges originated all reports were made on the floor, and often with great difficulty because of the pressure of business (IV, 4621). By giving this privilege the most important matters of business were greatly expedited. In 1890 a rule was adopted providing that reports should be made by filing with the Clerk; but privileged reports must still be made from the floor (IV, 3146). Thus the privilege of itself would now be a disadvantage were it not for the fact that the right of reporting at any time gives the right of immediate consideration by the House (IV, 3131, 3132, 3142-3147), and the matter so reported remains privileged until disposed of (IV, 3145).

Privileged questions interrupt the regular order of business as established by Rule XXIV, but when they are disposed of it continues on from the point of interruption (IV, 3070, 3071). But the Speaker has declined to allow a call of committees to be interrupted by a privileged report (IV, 3132). The presence of matter not privileged with privileged matter destroys the privileged character of a bill (IV, 4622, 4624, 4633, 4640, 4643), and when the text of a bill contains nonprivileged matter, privilege may not be created by a committee amendment in the nature of a substitute not containing the nonprivileged matter (IV, 4623).

The House may give a committee leave to report at any time only by the process of changing the rules (III, 1770).

The privilege given by this rule to the Committee on Rules has been held to include the right to report "special orders" for the consideration of individual bills or classes of bills (V, 6774). Privilege of Committee on Rules confined to "action touching rules, joint rules, and order of business." Ruling of Speaker Clark, August 15, 1912, Sixty-second Congress, second session, page 11017, as follows:

§ 724. The privilege of individual committees for reports.

"Mr. Mann made the point of order that the resolution is not privileged.

"The Speaker sustained the point of order, and said:

"The Chair rules that the point of order of the gentleman from Illinois [Mr. Mann] is well taken, and will give the reason for the ruling. In sub-

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§ 724.

division 56 of Rule XI, on page 357 of the Manual and Digest, the matters which are privileged in reports of committees are set out:

“The following-named committees shall have leave to report at any time on the matters herein stated, namely: The Committee on Rules is privileged to report rules, joint rules, and order of business.”

“That is all the Committee on Rules is privileged to report on at any time. The Chair will give an illustration. There are certain committees, which have the right to report at any time on certain things. For instance, the Committee on Appropriations is privileged to report general appropriation bills, but it is not privileged to report a special appropriation bill, and, as a matter of fact, the chairman of that committee, Mr. Fitzgerald, has asked several times unanimous consent to consider bills from his committee, because he knew that they were not privileged, and so did the Chair.

“The Committee on Ways and Means is privileged to report revenue bills, but every bill that it reports is not privileged. While the present occupant of the Chair was a member of that committee, the committee must have reported 50 bills into the House which were not privileged, such as making a port of entry out of some place or abolishing a port of entry, which latter, however, we never succeeded in doing. The course of procedure in cases of this sort is for these reports to go into the box. The gentleman from Texas [Mr. Henry] can do exactly what he said he can do. He can get his committee together and bring in a rule to pass this bill, and, as he said himself, it is nearly as broad as it is long; but nevertheless and notwithstanding, the Chair must enforce the rules of the House.”

The privilege of the Committee on Ways and Means to report “bills raising revenue” is broadly construed to cover bills relating to the revenue (IV, 3076, 4624, 4625); but a bill providing for a tariff commission (IV, 4626) and a declaratory resolution on a subject relating to the revenue were held not to be within the privilege (IV, 4626, 4627).

The right of the Committee on Appropriations to report at any time is confined strictly to general appropriation bills (IV, 4629-4632).

The right of the Committee on Public Lands to report at any time permits the including of matters necessary to accomplishment of the purposes for which privilege is given (IV, 4633, 4637-4639).

The privilege of the Committee on Printing is confined to printing for the use of the two Houses, or either of them (IV, 4647-4649).

Privileged reports from the Committee on Accounts are confined entirely to expenditures from the contingent fund (IV, 4640-4643), and resolutions authorizing appropriations from the Treasury directly for compensation of employees are not privileged (IV, 4645).

It shall always be in order to call up for consideration a report from the Committee on Rules, and, pending the consideration thereof, the Speaker may entertain one motion that the House adjourn; but after the result is announced he shall not entertain any other dilatory motion until the said report shall have been fully disposed of. The Committee on Rules shall not report any rule or order which shall provide that business under paragraph 7 of Rule XXIV shall be set aside by a vote of less than two-thirds of the Members present; nor shall it report any rule or order which shall operate to prevent the motion to recommit being made as provided in paragraph 4 of Rule XVI.

§ 725. Privilege of reports from Committee on Rules; and limitations thereon.

The Committee on Rules, "by uniform practice of the House," exercised the privilege of reporting at any time as early as 1888. Right to report at any time confined to privileged matters. (Speaker Clark, Aug. 15, 1912. For ruling in full see sec. 724.) This was probably the survival of a practice which existed as early as 1853 of giving the privilege of reporting at any time to this committee for a session (IV, 4650). In 1890 the committee was included among the committees whose reports were privileged by rule. The present rule was adopted in 1892 (IV, 4621) and amended on March 15, 1909.

Although highly privileged, a report from the Committee on Rules is not in order after the House has voted to go into Committee of the Whole (V, 6781). Also a conference report has precedence of it, even when the yeas and nays and previous question have been ordered (V, 6449). Report from Committee on Rules containing substantive propositions, separate vote can be had on each proposition. (Apr. 8, 1908, 1st sess., 60th Cong., p. 4509, by Speaker Cannon.) Also ruled by Speaker Clark, April 18, 1912, as follows:

"There are not very many precedents on this subject, one way or the other.

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"The two precedents cited from Speaker Henderson are really parts and parcels of one precedent. A division was demanded in a resolution. His first decision was that there should be a separate vote taken on each resolve. When that was through with, somebody undertook to divide the first resolve, and he held that could not be done.

"The most elaborate precedent in the lot, and the last one, is that on page 4509, Congressional Record, first session of the Sixtieth Congress. The gentleman from Pennsylvania [Mr. Dalzell] reported a rule from the Committee on Rules. The gentleman from New York [Mr. Fitzgerald] demanded a division, claiming that there were seven substantive propositions in the rule. The gentleman from Pennsylvania [Mr. Dalzell] took identically the same position then that the gentleman from Texas [Mr. Henry] takes to-day, and the gentleman from New York [Mr. Fitzgerald] took precisely the same position then that the gentleman from Illinois [Mr. Mann] takes to-day. The gentleman from Illinois [Mr. Mann] was himself mixed up in that debate. He seems to have agreed with the gentleman from New York on the proposition that a division could be had, but he differed from the gentleman from New York as to how many substantive propositions there were involved.

"Mr. Speaker Cannon, after listening to the debate, decided that the division could be had.

"So it seems to the Chair that the precedents are in favor of the contention of the gentleman from Illinois [Mr. Mann] and against the point of order of the gentleman from Texas [Mr. Henry].

"In addition to that it seems to the Chair that the reason of the thing is the same way. There are several substantive legislative propositions embraced in this rule that have no connection whatever with one another. A member might, and most probably would, be in favor of some and against others. He has a right to vote his sentiments on each, which he can not do if they are bunched together. Therefore the point of order raised by the gentleman from Texas [Mr. Henry] is overruled, and the Clerk will report the first proposition."

In the later practice it has been held that the question of consideration may not be raised against a report from the Committee on Rules (V, 4961-4963). The clause forbidding dilatory motions has been construed strictly (V, 5740-5742), and the motion to commit after the ordering of the previous question has been excluded in the later practice (V, 5593-5601), as have appeals and motions to reconsider (V, 5739).

Consideration can not be raised.

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§§ 726, 727.

Rules XII.

§ 726. Committees
(excepting Rules)
not to sit during
sessions of House.

57. No committee, except the Committee on Rules, shall sit during the sitting of the House, without special leave.

This rule was adopted in 1794. The exception for the Committee on Rules was inserted in 1893 (IV, 4546).

A request that a committee have leave to sit during sessions of the House has no privileged status in the order of business (IV, 4547). Leave for a committee to sit during sessions of the House does not release its members from liability to arrest during a call of the House (IV, 3020).

RULE XII.

DELEGATES.

1. The House shall elect from among the Delegates one additional member on each of the following committees, viz: Coinage, Weights, and Measures; Agriculture; Military Affairs; Post-Office and Post-Roads; Public Lands; Indian Affairs; and Mines and Mining; and two on Territories; and they shall possess in their respective committees the same powers and privileges as in the House, and may make any motion except to reconsider.

§ 727. Powers and
privileges of Dele-
gates on the floor
and as to committee
service.

The first form of this rule was adopted in 1871, and it was perfected by amendments in 1876, 1880, 1887, and 1892 (II, 1297).

Delegates are not usually appointed on committees other than those specified, but there have been instances (II, 1298), and in one case a Delegate was made chairman of a select committee (II, 1299, 1303). In the latter practice Delegates do not vote in committee (II, 1300, 1301).

The law provides that on the floor of the House a Delegate may debate (II, 1290), and he may in debate call a Member to order (II, 1295). He

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may make any motion which a Member may make except the motion to reconsider (II, 1291, 1292). A Delegate has even moved an impeachment (II, 1303). He may be appointed a teller (II, 1302); but the law forbids him to vote (II, 1290), and he may not object to the consideration of a bill (II, 1293, 1294).

The office of Delegate was established by ordinance of the Continental Congress and confirmed by a law of Congress (I, 400, 421). The nature of the office has been the subject of much discussion (I, 400, 403, 473); and except as provided by law (I, 431, 526) the qualifications of the Delegate have been a subject of much discussion (I, 421, 423, 469, 470, 473). A territory or district must be organized by law before the House will admit a Delegate (I, 405, 407, 411, 412).

At the organization of the House the Delegates are sworn (I, 400, 401); but the Clerk does not put them on the roll (I, 61, 62).

A Delegate resigns in a communication addressed to the Speaker (II, 1304). He may be arrested and censured for disorderly conduct (II, 1305), but there has been disagreement as to whether he should be expelled by a majority or two-thirds vote (I, 469).

2. The Resident Commissioner to the United States from Porto Rico shall possess the same powers and privileges as to committee service and in the House as are possessed by Delegates; and shall be competent to serve on the Committee on Insular Affairs as an additional member.

§ 728. Resident
Commissioners.

This rule was adopted in 1904 (II, 1306).
Additional Delegates.

RULE XIII.

CALENDARS AND REPORTS OF COMMITTEES.

1. There shall be three calendars to which all business reported from committees shall be referred, viz:

§ 729. Calendars for
reports of com-
mittees.

First. A Calendar of the Committee of the Whole House on the state of the Union, to

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§§ 730, 731.

Rule XIII.

which shall be referred bills raising revenue, general appropriation bills, and bills of a public character directly or indirectly appropriating money or property.

Second. A House Calendar, to which shall be referred all bills of a public character not raising revenue nor directly or indirectly appropriating money or property.

Third. A Calendar of the Committee of the Whole House, to which shall be referred all bills of a private character.

This rule was adopted in 1880; but as early as 1820 a rule was adopted creating calendars for the Committees of the Whole. Bills not requiring consideration in Committee of the Whole were considered when reported, but in 1880 the House Calendar was created to remedy the delays in making reports caused by such consideration (IV, 3115).

A motion to correct an error in referring a bill to the proper calendar presents a question of privilege (III, 2614, 2615); but a mere clerical error in the calendar does not give rise to such a question (III, 2616). A bill improperly reported is not entitled to a place on the calendar (IV, 3117).

Reports from the Court of Claims do not remain on the calendar from Congress to Congress, even when a law seems so to provide (IV, 3298-3302).

2. All reports of committees, except as provided in clause 56 of Rule XI, together with the views of the minority, shall be delivered to the Clerk for printing and reference to the proper calendar under the direction of the Speaker, in accordance with the foregoing clause, and the titles or subject thereof shall be entered on the Journal and printed in the Record:

§ 730. Nonprivileged reports filed with Clerk.

Provided, That bills reported adversely shall be laid on the table, unless the committee reporting a bill, at the time, or any Mem-

§ 731. Adverse reports.

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§ 782.

ber within three days thereafter, shall request its reference to the calendar, when it shall be referred, as provided in clause 1 of this rule.

3. After a bill which has been favorably reported shall be upon either the House or the Union Calendar any Member may file with the Clerk a notice that he desires such a bill placed upon a special calendar to be known as the "Calendar for Unanimous Consent." On days when it shall be in order to move to suspend the rules the Speaker shall, immediately after the approval of the Journal, direct the Clerk to call the bills which have been for three days upon the "Calendar for Unanimous Consent." Should objection be made to the consideration of any bill so called, it shall immediately be stricken from such calendar; but such bill may be restored to the calendar at the instance of the Member, and if again objected to, it shall be immediately stricken from such calendar, and shall not thereafter be placed thereon: *Provided*, That the same bill shall not be called twice on the same legislative day.

This rule adopted March 15, 1909.

Since the Unanimous Consent Calendar established, Speaker precluded from recognizing Members to ask unanimous consent. (Jan. 27, 1910, 2d sess. 61st Cong., p. 1135; Apr. 4, 1910, 2d sess. 61st Cong., p. 4240; June 25, 1910, 2d sess. 61st Cong., p. 915. Also ruled by Speaker Clark, May 23, 1911, 1st sess. 62d Cong., Cong. Rec., p. 1495.

Bills must be on printed Calendar to be called up. (Dec. 20, 1909, 2d sess. 61st Cong., pp. 264-265.)

Bills called up, one Member reserving the right to object, any Member has the right to object. (May 2, 1910, 2d sess. 61st Cong., p. 5667.)

Before debate by unanimous consent bills can be passed on Calendar,

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§§ 733, 734.

Rule XIV.

after discussion can not be passed. (Feb. 7, 1910, 61st Cong., 2d sess., p. 1543.)

House bill on Unanimous Consent Calendar, by unanimous consent House committee discharged from consideration of Senate bill on the same subject, and Senate bill substituted for the House bill. (2d sess. 61st Cong., pp. 2171-2172.)

4. There shall also be a Calendar of Motions to Discharge Committees, as provided in clause 4 of Rule XXVII.

§ 733. Motion to discharge.

§ 733A. Calendars printed.

5. Calendars shall be printed daily.

Rule adopted Sixty-second Congress.

RULE XIV.

OF DECORUM AND DEBATE.

1. When any Member desires to speak or deliver any matter to the House, he shall rise and respectfully address himself to "Mr. Speaker," and, on being recognized, may address the House from any place on the floor or from the Clerk's desk, and shall confine himself to the question under debate, avoiding personality.

§ 734. Obtaining the floor for debate; and relevancy and decorum therein.

This rule was adopted in 1880, but was made up, in its main provisions, from older rules, which dated from 1789 and 1811 (V, 4979).

It is a general rule that a motion must be made before a Member may proceed in debate (V, 4984, 4985), and this motion may be required to be reduced to writing (V, 4986). The withdrawal of a motion precludes further debate on it (V, 4989). But sometimes when a communication or a report has been before the House it has been debated before any specific motion has been made in relation to it (V, 4987, 4988). In a few cases, such as conference reports and reports from the Committee of the Whole, the motion to agree is considered as pending without being offered from the floor (IV, 4896; V, 6517).

In presenting a question of personal privilege the Member is not required in the first instance to make a motion or offer a resolution, but such is not

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the rule in presenting a case involving the privileges of the House (III, 2546, 2547). Personal explanations merely are made by unanimous consent (V, 5065).

A motion must also be stated by the Speaker or read by the Clerk before debate may begin (V, 4982, 4983, 5304).

In addressing the House the Member should also address the Chair (V, 4980).

A Member having the floor may not be taken off his feet by an ordinary motion, even the highly privileged motion to adjourn (V, 5369, 5370); but he may be interrupted for a conference report (V, 6451). It is a custom also for the Speaker to request a Member to yield for the reception of a message. A Member may yield the floor for a motion to adjourn or that the Committee of the Whole rise without losing his right to continue when the subject is again continued (V, 5009-5013). A Member may also resume his seat while a paper is being read in his time without losing his right to the floor (V, 5015). A Member who, having the floor, moved the previous question was permitted to resume the floor on withdrawing the motion (V, 5474). But a Member may not yield to another Member to offer an amendment without losing the floor (V, 5021, 5030, 5031). A Member desiring to interrupt another in debate should address the Chair for permission of the Member speaking (V, 5006), but the latter may exercise his own discretion as to whether or not he will yield (V, 5007, 5008).

The Speaker may of right speak from the Chair on questions of order and be first heard (II, 1367), but with this exception he may speak from the Chair only by leave of the House and on questions of fact (II, 1367-1372). On occasions comparatively rare Speakers have called Members to the Chair and participated in debate, usually without asking consent of the House (II, 1367, 1368, 1371; III, 1950; V, 6097). The former custom of the Speakers to participate freely in debate in Committee of the Whole has ceased (II, footnote).

It has always been held, and generally quite strictly, that in the House the Member must confine himself to the subject under debate (V, 5043-5048). On a motion to amend the debate is confined to the amendment and may not include the general merits of the bill (V, 5049-5051).

While the Speakers have entertained appeals from their decisions as to irrelevancy, they have held that such appeals were not debatable (V, 5056-5063).

§ 734A. Interrup-
tion of a Member
in debate.

§ 735. Speaker in
debate.

§ 736. Member must
confine himself to
the subject.

RULES OF THE HOUSE OF REPRESENTATIVES.

§§ 787, 788.

Rule XIV.

In Committee of the Whole House on the state of the Union during general debate the Member need not confine himself to the subject (V, 5233-5238); but this privilege does not extend to the Committee of the Whole House (V, 5239). And in all cases the five-minute debate in Committee of the Whole is confined to the subject (V, 5240-5256).

§ 787. Speaker's
power of
recognition.

2. When two or more Members rise at once, the Speaker shall name the Member who is first to speak; * * *

This rule was adopted in 1789 (V, 4978).

In the early history of the House, when business proceeded on presentation by individual Members, the Speaker recognized the Member who arose first; and in case of doubt there was an appeal from his recognition (II, 1429-1434). But as the membership and business of the House increased it became necessary to establish and adhere to a fixed order of business, and recognitions, instead of pertaining to the individual Member, necessarily came to pertain to the bill or other business which would be before the House under the rule regulating the order of business. Hence the necessity that the Speaker should not be compelled to heed the claims of Members as individuals was expressed in 1879 in a report from the Committee on Rules, which declared that "in the nature of the case discretion must be lodged with the presiding officer" (II, 1424). And in 1881 the Speaker declined to entertain an appeal from his decision on a question of recognition (II, 1425-1428), establishing thereby a practice which continues.

Although there is no appeal from the Speaker's recognition, he is not a free agent in determining who is to have the floor. The practice of the House establishes rules from which he may not depart. When the order of business brings before the House a certain bill he must first recognize, for motions of its disposition, the Member who represents the committee which has reported it (II, 1447). This is not necessarily the chairman of the committee, for a chairman who, in committee, has opposed the bill, must yield the prior recognition to a member of his committee who has favored the bill (II, 1449). Usually, however, the chairman has charge of the bill and is entitled at all stages to prior recognition for allowable motions intended to expedite it (II, 1452, 1457). This principle does not, however, apply to the Chairman of the Committee of the Whole (II, 1453). The Member who originally introduces the bill which a committee reports has no claims to recognition as opposed to the claims of the members of the

§ 788. Speaker
governed by usage
in recognitions.

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§§ 739, 740.

committee, but in cases where a proposition is brought directly before the House by a Member the mover is entitled to prior recognition for motions and debate (II, 1446, 1454). And this principle applies to the makers of certain motions. Thus, the Member on whose motion the enacting clause of a bill is stricken out in Committee of the Whole is entitled to prior recognition when the bill is reported to the House (V, 5337), and in a case where a Member had raised an objection in the joint meeting to count the electoral vote the Speaker recognized him first when the Houses had separated to consider the objection (III, 1956). But a Member may not, by offering a debatable motion of higher privilege than the pending motion, deprive the Member in charge of the bill of possession of the floor for debate (II, 1460-1463). But recognition to make a motion belongs to the Member proposing the motion of highest privilege (V, 5480). The fact that a Member has the floor on one matter does not necessarily entitle him to prior recognition on a motion relating to another matter (II, 1464). It is because the Speaker is governed by these usages that he often asks, when a Member seeks recognition, "For what purpose does the gentleman rise?" By this question he determines whether the Member proposes business or a motion which is entitled to precedence.

When an essential motion made by the Member in charge of the bill is decided adversely the right to prior recognition passes to the Member leading the opposition to the motion (II, 1465-1468). The control of the measure passes under this principle when the House disagrees to the recommendation of the committee reporting the bill (II, 1469-1472), when the Committee of the Whole reports a bill adversely (IV, 4897), and, in most cases, when the House disagrees to a conference report (II, 1473-1477; V, 6396). But the mere defeat of an amendment proposed by the Member in charge does not cause right to prior recognition to pass to the opponents (II, 1478, 1479).

In debate the members of the committee—except the Committee of the Whole (II, 1453)—are entitled to priority of recognition for debate (II, 1438, 1448); but a motion to lay a proposition on the table is in order before the Member entitled to prior recognition for debate has begun his remarks (V, 5391-5395).

In recognizing for general debate the Chair alternates between those favoring and those opposing the pending matter, preferring members of the committee reporting the bill (II, 1439-1444). When a member of the committee has occupied the floor in favor of a measure a Member opposing

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§§ 741-743.

Rule XIV.

should be recognized next, even though he be not a member of the committee (II, 1445). The principle of alternation is not insisted on rigidly where a limited time is controlled by Members, as in the "forty minutes" of debate on motions for suspension of the rules and the previous question (II, 1442).

As to motions to suspend the rules, which are in order on two days each

§ 741. Exceptions
to the usages
constraining the
Speaker as to
recognitions.

month, the Speaker exercises a discretion to decline to recognize (V, 6791-6794, 6845). He also may decline to recognize a Member who desires to ask unanimous consent to set aside the rules in order to consider a bill not otherwise in order, this being his way of signifying his

objection to the request. But this authority does not extend to proceedings under Rule XIII, § 3.

2. * * *

and no Member shall occupy more than one hour in debate on any question in the House or in committee, except as

§ 742. The hour
rule in debate.

further provided in this rule.

This rule dates from 1841, when the increase of membership had made it necessary to prevent the making of long speeches which sometimes occupied three or four hours each (V, 4978).

It applies to debate on a question of privilege, as well as to debate on other questions (V, 4990); and when the time of debate has been placed within the control of those representing the two sides of a question it must be assigned to Members in accordance with this rule (V, 5004, 5005).

3. The Member reporting the measure under con-

§ 743. The opening
and closing of
debate.

sideration from a committee may open and close, where general debate has been had thereon; and if it shall ex-

tend beyond one day, he shall be entitled to one hour to close, notwithstanding he may have used an hour in opening.

This rule was adopted in 1847 and perfected in 1880 (V, 4996).

In the later practice this right to close may not be exercised after the previous question is ordered (V, 4997-5000).

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Rule XIV.

§§ 744, 745.

4. If any Member, in speaking or otherwise, transgress the rules of the House, the Speaker shall, or any Member may, call him to order; in which case he shall immediately sit down, unless permitted, on motion of another Member, to explain, and the House shall, if appealed to, decide on the case without debate; if the decision is in favor of the Member called to order, he shall be at liberty to proceed, but not otherwise; and, if the case require it, he shall be liable to censure or such punishment as the House may deem proper.

This rule was adopted in 1789, and amended in 1822 and 1880 (V, 5175).

The Speaker may call a Member to order without suggestion from the floor (V, 5154, 5161-5163, 5192); but except for naming him may not otherwise censure or punish him (II, 1345). A Delegate may call a Member to order (II, 1295).

When a Member is called to order under this rule it is the practice to test the opinion of the House by a motion "that the gentleman be allowed to proceed in order" (V, 5188, 5199); but a motion that the Member be permitted to explain has been held to have precedence, even in a case where the words have been taken down (V, 5187). A Member called to order and held to be out of order loses the floor (V, 5196-5199) and may not proceed, even on yielded time (V, 5147).

The House has censured Members for disorderly words (II, 1253, 1254, 1259, 1305).

5. If a Member is called to order for words spoken in debate, the Member calling him to order shall indicate the words excepted to, and they shall be taken down in writing at the Clerk's desk and read aloud to the House; but he shall not be held to answer, nor be subject to the censure of the House therefor, if further debate or other business has intervened.

§ 745. Words taken down.

RULES OF THE HOUSE OF REPRESENTATIVES.

§ 746.

Rule XIV.

This rule was adopted in 1837, with amendment in 1880. But in 1808 the practice of writing down objectionable words had been established, and the rule was adopted to prevent the taking down of words after intervening business (V, 5177).

When a Member denies that the words taken down are the exact words used by himself, the question as to the words is put to the House for decision (V, 5179, 5180). After the Speaker has decided that words taken down are out of order, a motion that the Member be permitted to explain is in order before the motion that he be permitted to proceed is in order (V, 5187).

When the disorderly words are spoken in the Committee of the Whole they are taken down as in the House and read at the Clerk's desk, whereupon the committee rises and reports them to the House (II, 1257-1259, 1348); and it is not in order as a question of privilege in the House to propose censure of a Member for disorderly words spoken in Committee of the Whole but not taken down or reported therefrom (V, 5202).

In certain exceptional cases, as when disorderly words are part of an occurrence constituting a breach of privilege (II, 1657), or when a Member's language has been investigated by a committee (II, 1655), or when he has reiterated on the floor certain published charges (III, 2637), or when he has uttered words alleged to be treasonable (II, 1252), the House has proceeded to censure or other action although business may have intervened.

6. No Member shall speak more than once to the same question without leave of the House, unless he be the mover, proposer, or introducer of the matter pending, in which case he shall be permitted to speak in reply, but not until every Member choosing to speak shall have spoken.

§ 746. Member to speak but once to the same question.

This rule was adopted in 1789, and amended in 1840 (V, 4991).

A Member who has spoken once to the main question may speak again to an amendment (V, 4993, 4994). It is too late to make the point that a Member has spoken already if no one claims the floor until he has made some progress in his speech (V, 4992). The right to close may not be exercised after the previous question has been ordered (V, 4997-5000). The right to close does not belong to a Member who has merely moved to reconsider the vote on a bill which he did not report (V, 4995). The right of a contestant in an election case to close when he is permitted to speak in the contest has been a matter of discussion (V, 5001).

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Rule XV.

§§ 747, 748.

7. While the Speaker is putting a question or addressing the House no Member shall walk out of or across the hall, nor, when a Member is speaking, pass between him and the Chair; and during the session of the House no Member shall wear his hat, or remain by the Clerk's desk during the call of the roll or the counting of ballots, or smoke upon the floor of the House; and the Sergeant-at-Arms and Doorkeeper are charged with the strict enforcement of this clause. Neither shall any person be allowed to smoke upon the floor of the House at any time.

This rule is made up of provisions adopted in 1789, 1837, 1871, and 1896. Originally Members wore their hats during sessions, as in Parliament, and the custom was not abolished until 1837 (II, 1136).

RULE XV.

ON CALLS OF THE ROLL AND HOUSE.

1. Upon every roll call the names of the Members shall be called alphabetically by surname, except when two or more have the same surname, in which case the name of the State shall be added; and if there be two such Members from the same State, the whole name shall be called, and after the roll has been once called, the Clerk shall call in their alphabetical order the names of those not voting; and thereafter the Speaker shall not entertain a request to record a vote or announce a pair unless the Member's name has been noted under clause 3 of this rule.

§ 748. Call of the roll for the yea-and-nay vote.

RULES OF THE HOUSE OF REPRESENTATIVES.

§§ 749, 750.

Rule XV.

The first form of this rule was adopted in 1789, and amendments were added in 1870, 1880, and 1890 (V, 6046).

The names of Members who have not been sworn are not entered on the roll from which the yeas and nays are called for entry on the Journal (V, 6048).

Since 1879 the Clerk, in calling the roll, has called Members by the surnames with the prefix "Mr." instead of calling the full names (V, 6047). The Speaker's name is not on the voting roll and is not ordinarily called (V, 5970). When he votes his name is called at the close of the roll (V, 5965). In case of a tie which is revealed by a correction of the roll, he has voted after intervening business or even on another day (V, 5969, 6061-6063).

A Member who has failed to respond when his name was called may not as a constitutional right demand that his vote be recorded before the announcement of the result (V, 6066-6068), even if he has refrained from voting because of a misunderstanding as to a pair (V, 6081), or because his attention was distracted when his name was called (V, 6070). But when a Member declares that he was listening when his name should have been called and failed to hear it, he is permitted to record his vote (V, 6071, 6072). The Speaker may not permit a Member to answer "present" at the conclusion of a roll call (V, 6069) unless there be a question as to a quorum. Before the announcement of the result (V, 6064), the Speaker, in his discretion, may order the vote to be recapitulated (V, 6049, 6050).

Before the result of a vote has been finally and conclusively pronounced by the Chair, but not thereafter, a Member may change his vote (V, 5931-5933, 6093, 6094); and a Member who has answered "present" may change it to "yea" or "nay" (V, 6060). But a vote given by a Member may not be withdrawn without leave of the House (V, 5930).

When a vote actually given fails to be recorded (V, 6061-6063) the Member may, before the approval of the Journal, demand as a matter of right that correction be made (V, 5969). But statements of other Members as to alleged errors in a recorded vote must be very definite and positive to justify the Speaker in ordering a change of the roll (V, 6064, 6099).

When once begun the roll call may not be interrupted even by a motion to adjourn (V, 6053), a parliamentary inquiry, a question of personal privilege (V, 6058, 6059), the arrival of the time fixed for another order of business (V, 6056), or for a recess (V, 6054, 6055), or the presentation of a conference report (V, 6443). But it is interrupted for the reception of messages and by the arrival of the hour fixed for adjournment sine die (V, 6715-6718). Incidental questions arising during the roll call, such as the refusal of a Member to vote (V, 5946-5948), are considered after the completion of the call and before the announcement of the vote (V, 6059).

§ 749. Changes and corrections of votes.

§ 750. Interruptions of the roll call.

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Rule XV.

§§ 751, 752.

2. In the absence of a quorum, fifteen Members, including the Speaker, if there is one, shall be authorized to compel the attendance of absent Members, and in all calls of the House the doors shall be closed, the names of the Members shall be called by the Clerk, and the absentees noted; and those for whom no sufficient excuse is made may, by order of a majority of those present, be sent for and arrested, wherever they may be found; by officers to be appointed by the Sergeant-at-Arms for that purpose, and their attendance secured and retained; and the House shall determine upon what condition they shall be discharged. Members who voluntarily appear shall, unless the House otherwise direct, be immediately admitted to the Hall of the House, and they shall report their names to the Clerk to be entered upon the Journal as present.

The essential portions of this rule were adopted in 1789 and 1795, with minor amendments in 1888 and 1890 (IV, 2982). In times of obstruction it has not been found wholly efficient, and for most cases is superseded by section 4 of this rule.

Under this rule a call may not be ordered by less than 15 (IV, 2983), and it must be ordered by majority vote, a minority of 15 or more not being sufficient (IV, 2984). A quorum not being present no motion is in order but for a call of the House or to adjourn (IV, 2950, 2988).

§ 752. Ordering and conducting the call.

On the roll call the names of Members are called alphabetically by surname (V, 6046). This roll call may not be interrupted by a motion to dispense with further proceedings under the call (IV, 2992), and a recapitulation of the names of those who appear after their names have been called may not be demanded (IV, 2993). But during proceedings under the call the roll may be ordered to be called again by those present (IV, 2991).

During a call less than a quorum may revoke leaves of absence (IV, 3003, 3004) and excuse a Member from attendance (IV, 3000, 3001), but they may

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§§ 753, 754.

Rule XV.

not grant leaves of absence (IV, 3002). The roll is sometimes called for excuses, and motions to excuse are in order during this call (IV, 2997), but neither the motion to excuse nor an incidental appeal are debatable (IV, 2999). After the roll has been called for excuses and the House has ordered the arrest of those who are unexcused, a motion to excuse is in order when the absentee is brought to the bar (IV, 3012).

An order of arrest for absent Members may be made after a single calling of the roll (IV, 3015, 3016), and a warrant issues on direction of those present, such motion having precedence of a motion to dispense with proceedings under the call (IV, 3036). The Sergeant-at-Arms is required to arrest Members wherever they may be found (IV, 3017), and leave for a committee to sit during sessions does not release its Members from liability to arrest (IV, 3020). A Member who appears and answers is not subject to arrest (IV, 3019), and in a case where a Member complained of wrongful arrest the House ordered the Sergeant-at-Arms to investigate and amend the return of his warrant (IV, 3021). A Member once arrested having escaped it was held that he might not be brought back on the same warrant (IV, 3022).

Arrested Members are arraigned at the bar and a quorum may order the arraignment at a future day (IV, 3030-3035). Those present on a call may prescribe a fine as a condition of discharge, but this penalty has been of rare occurrence (IV, 3013, 3014, 3025).

The call of the House is ended by a motion "to dispense with further proceedings under the call," which may be agreed to by less than a quorum as well as by a quorum (IV, 3038, 3040), and when so agreed to ends all proceedings of the call, even if they have not begun (IV, 3040). But the motion is not in order pending a motion for arrest (IV, 3029, 3037).

During the call, which in later practice has been invoked only in absence of a quorum, incidental motions may be agreed to by less than a quorum (IV, 2994, 3029). This includes motions for the previous question (V, 5458), to reconsider and to lay the motion to reconsider on the table (V, 5607, 5608), to adjourn, which is in order even in the midst of the call of the roll for excuses (IV, 2998), and an appeal from a decision of the Chair (IV, 3010, 3037). The yeas and nays may also be ordered (IV, 3010), but a question of privilege may not be raised unless it be something connected immediately with the proceedings (III, 2545). Motions not strictly incidental to the call are not admitted, as for a recess (IV, 2995, 2996), to excuse a Member from voting even when otherwise in order (IV, 3007), to enforce the statute relating to deductions of pay of Members for absence (IV, 3011), to construe a rule or make a new rule (IV, 3008), or to order a change of a Journal record (IV, 3009).

§ 754. Motions
during a call.

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Rule XV.

§§ 755, 756.

3. On the demand of any Member, or at the suggestion of the Speaker, the names of Members sufficient to make a quorum in the Hall of the House who do not vote shall be noted by the Clerk and recorded in the Journal, and reported to the Speaker with the names of the Members voting, and be counted and announced in determining the presence of a quorum to do business.

§ 755. Count of those not voting to make a quorum of record on a roll call.

This rule was adopted in 1890 (IV, 2905), but is merely put in form of rule a principle already established by a decision of the Chair (IV, 2895). It was much in use in the first years after its adoption (IV, 2620, 2905-2907); but with the decline of obstruction in the House and the adoption of section 4 of this rule the necessity for its use has disappeared to a large extent.

4. Whenever a quorum fails to vote on any question, and a quorum is not present and objection is made for that cause, unless the House shall adjourn there shall be a call of the House, and the Sergeant-at-Arms shall forthwith proceed to bring in absent Members, and the yeas and nays on the pending question shall at the same time be considered as ordered. The Clerk shall call the roll, and each Member as he answers to his name may vote on the pending question, and, after the roll call is completed, each Member arrested shall be brought by the Sergeant-at-Arms before the House, whereupon he shall be noted as present, discharged from arrest, and given an opportunity to vote and his vote shall be recorded. If those voting on the question and those who are present and decline to vote shall together make a majority of the House, the

§ 756. The call of the House in the new form.

RULES OF THE HOUSE OF REPRESENTATIVES.

§§ 757, 758.

Rule XVI.

Speaker shall declare that a quorum is constituted, and the pending question shall be decided as the majority of those voting shall appear. And thereupon further proceedings under the call shall be considered as dispensed with. At any time after the roll call has been completed, the Speaker may entertain a motion to adjourn, if seconded by a majority of those present, to be ascertained by actual count by the Speaker; and if the House adjourns, all proceedings under this section shall be vacated.

This rule was adopted in 1896 (IV, 3041).

It applies only to votes wherein a quorum is required, and hence does not apply to a motion to adjourn (IV, 3042), or to a call when there is no question pending (IV, 2990).

Under this rule the roll is called over twice, and those appearing after their names are called may vote (IV, 3052). A motion to adjourn may be made before the call begins (IV, 3050). After the roll has been called, and while the proceedings to obtain a quorum are going on, motions to excuse Members are in order (IV, 3051). The Sergeant-at-Arms is required to detain those who are present and bring in absentees (IV, 3045-3048), and he does this without the authority of a resolution adopted by those present (IV, 3049). There is doubt as to whether or not a warrant is necessary, but it is customary for the Speaker to issue one on the authority of the rule (IV, 3043). When arrested, Members are arraigned at the bar, and either vote or are noted as present, after which they are discharged (IV, 3044).

§ 757. Conduct of
the call in the
new form.

RULE XVI.

ON MOTIONS, THEIR PRECEDENCE, ETC.

1. Every motion made to the House and entered by the Speaker shall be reduced to writing on the demand of any Member, and shall be entered on the Journal with the name of the Member making it, unless it is withdrawn the same day.

§ 758. Motions
reduced to writing
and entered on
the Journal.

RULES OF THE HOUSE OF REPRESENTATIVES.

Rule XVI.

§§ 759, 760.

This rule was made up in 1880 of old rules adopted in 1789 and 1806 (V, 5300).

Because of this rule it has been held not in order to amend or strike out a Journal entry setting forth a motion exactly as made (IV, 2783, 2789). A motion not entertained is not entered on the Journal (IV, 2813, 2844-2846).

2. When a motion has been made, the Speaker shall state it or (if it be in writing) cause it to be read aloud by the Clerk before being debated, and it shall then be in possession of the House, but may be withdrawn at any time before a decision or amendment.

§ 759. Stating and withdrawing of motions.

The provisions of this rule were adopted first in 1789. At that time a second was required for every motion, but in practice this requirement became obsolete very early, and it was dropped from the rule in 1880 (V, 5304).

The House always insists that the motion shall be stated or read before debate shall begin (V, 4983). It is the duty of the Speaker to put a motion in order under the rules and practice without passing on its constitutional effect (IV, 3550). In a case wherein a clerk presiding during organization of the House declined to put a question, a Member-elect put the question from the floor (I, 67).

Under certain circumstances, a Member may make a double motion (V, 5637).

Even after the affirmative side has been taken on a division the withdrawal of a motion has been permitted (V, 5348), also after a viva voce vote and the ordering and appointment of tellers (V, 5349). While the House was dividing on a second of the previous question (this second is no longer required) on a motion to refer a resolution, the Member was permitted to withdraw the resolution (V, 5350); also a motion was once withdrawn after the previous question had been ordered on an appeal from a decision of a point of order as to the motion (V, 5356). A motion to suspend the rules may be withdrawn at any time before a second is ordered (V, 6844), even on another suspension day (V, 6844). A motion may be withdrawn although an amendment may have been offered and be pending (V, 5347), and in the House an amendment, whether simple or in the nature of a substitute, may

§ 760. Conditions of withdrawal of motions.

RULES OF THE HOUSE OF REPRESENTATIVES.

§§ 761, 762.

Rule XVI.

be withdrawn at any time before amendment or decision is had thereon; but the rule is otherwise in Committee of the Whole (V, 5753):

A "decision" which prevents withdrawal may consist of the ordering of the yeas and nays (V, 5353), either directly on the motion or on a motion to lay it on the table (V, 5354), the ordering of the previous question (V, 5355), or the demand therefor (V, 5489), or the refusal to lay on the table (V, 5351, 5352).

A Member having the right to withdraw a motion before a decision thereon has the resulting power to modify the motion (V, 5358). A motion being withdrawn, all proceedings on an appeal arising from a point of order related to it fell thereby (V, 5356).

3. When any motion or proposition is made, the question, Will the House now consider it? shall not be put unless demanded by a Member.

§ 761. The question of consideration.

The question of consideration is an outgrowth of the practice of the House, and was in use as early as 1808. The rule was adopted in 1817 in order to limit its use. It is the means by which the House protects itself from business which it does not wish to consider (V, 4936). The refusal to consider does not amount to the rejection of a bill or prevent its being brought before the House again (V, 4940). It has once been held that a question of privilege which the House has refused to consider may be brought up again on the same day (V, 4942).

A Member may demand the question of consideration, although the Member in charge of the bill may claim the floor for debate (V, 4944, 4945); but after debate has begun the demand may not be made (V, 4937-4939). It has been admitted, however, after the making of a motion to lay on the table (V, 4943). The demand for the question of consideration may not be prevented by a motion for the previous question (V, 5478), but after the previous question is ordered it may not be demanded (V, 4965, 4966), even on another day, unless other business has intervened (V, 4967, 4968). The question of consideration being pending, a motion to refer is not in order (V, 5554).

The intervention of an adjournment does not destroy the right to raise the question of consideration (V, 4946), but this right did not hold good in a case where the yeas and nays had been ordered and the House had adjourned pending the failure of a quorum on the roll call (V, 4949). A question of consideration undisposed of at an adjournment does not recur

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as unfinished business on a succeeding day (V, 4947, 4948). It is not in order to reconsider the vote whereby the House refuses to consider a bill (V, 5626, 5627).

The question of consideration may be demanded against a matter of the highest privilege, such as the right of a Member to his seat (V, 4941); but not against a bill returned with the President's objections (V, 4969, 4970). It may not be raised against a proposition before the House for reference merely, as a petition (V, 4964). It may not be demanded against a class of business in order under a special order or rule, but may be demanded against each bill individually (IV, 3308, 3309, 4958, 4959). It may be raised against a bill which has been made a special order (IV, 3175; V, 4953-4957), unless the order provides for immediate consideration (V, 4960); but it may not be raised against a report from the Committee on Rules relating to the order of considering individual bills (V, 4961-4963).

The question of consideration may not be raised on a motion relating to the order of business (V, 4971-4976) or a motion to discharge a committee (V, 4977). On a motion to go into Committee of the Whole to consider a bill the House expresses its wish as to consideration by its vote on this motion (V, 4973-4976).

A point of order which, if sustained, might prevent the consideration of a bill should be made and decided before the question of consideration is put (V, 4950, 4951); but if the point relates merely to the manner of considering, it should be passed on afterwards (V, 4950). In general, after the House has decided to consider, a point of order raised with the object of preventing consideration, in whole or part, comes too late (IV, 4598; V, 4952, 6012-6914).

4. When a question is under debate, no motion shall be received but to adjourn, to lay on the table, for the previous question (which motions shall be decided without debate), to postpone to a day certain, to refer, or to amend, or postpone indefinitely; which several motions shall have precedence in the foregoing order; and no motion to postpone to a day certain, to refer, or to postpone indefinitely,

§ 764. Relation of question of consideration to points of order.

§ 765. Precedence of privileged motions.

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being decided, shall be again allowed on the same day at the same stage of the question. After the previous question shall have been ordered on the passage of a bill or joint resolution one motion to recommit shall be in order, and the Speaker shall give preference in recognition for such purpose to a Member who is opposed to the bill or joint resolution.

The first form of this rule appears in 1789; but amendments have been made at various times (V, 5301), including one on March 15, 1909.

Its application is confined to cases wherein a question is "under debate" (V, 5379). It has been held that a question ceases to be "under debate" after the previous question has been demanded (V, 5419). But with the exception of the motion to adjourn it is obvious that the motions specified in this rule can only be used when some question is "under debate."

The motion to adjourn not only has the highest precedence when a question is under debate, but, with certain restrictions, it has the highest privilege under all other conditions. Even questions of privilege (III, 2521) and the motion to reconsider yield to it (V, 5605), and a conference report may defer it only until the report is before the House (V, 6451-6453). The motion to adjourn may be made after the yeas and nays are ordered and before the roll call has begun (V, 5366), before the reading of the Journal (IV, 2757), or when the Speaker is absent and the Clerk is presiding (I, 228). But the motion to adjourn may not interrupt a Member who has the floor (V, 5369, 5370), or a call of the yeas and nays (V, 6053), or the actual act of voting by other means (V, 5360), or be made after the House has voted to go into Committee of the Whole (IV, 4728; V, 5367, 5368), or defer the right of a Member to take the oath (I, 622); and when no question is under debate it may not displace a motion to fix the day to which the House shall adjourn (V, 5381).

When the House has fixed the hour of daily meeting, the motion to adjourn may not be amended (V, 5754) as by specifying a particular day (V, 5360) or hour (V, 5364), or by stating the purposes of adjournment (V, 5371, 5372); but when the hour of daily meeting is not fixed, the motion to adjourn may fix it (V, 5362, 5363).

The motion to adjourn is not debatable (V, 5359), and is not in order in Committee of the Whole (IV, 4716). After the motion is made neither

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another motion nor an appeal may intervene before the taking of the vote (V, 5361).

The motion to fix the day to which the House shall adjourn was formerly included within the rule as to precedence of motions, but with the motion for a recess was dropped because of the facility with which it was used in obstructive tactics (V, 5301, 5379). No question being under debate, a motion to fix the day to which the House should adjourn, already made, was held not to give way to a motion to adjourn (V, 5381). But if the motion to adjourn be made first, the motion to fix the day or for a recess is not entertained (V, 5302).

The motion to fix the day is not debatable under the practice of the House (V, 5379, 5380).

The motion to lay on the table is used in the House for a final, adverse disposition of a matter without debate (V, 5389). But a question of privilege laid on the table may be taken therefrom on motion made and agreed to by the House (V, 5438). The motion to lay on the table has the precedence given it by the rule, but may not be made after the previous question is ordered (V, 5415-5422), or even after the yeas and nays have been ordered on the demand for the previous question (V, 5408, 5409).

When a bill is laid on the table, pending motions connected therewith go to the table also (V, 5426, 5427); and when a proposed amendment is laid on the table the pending bill goes there also (V, 5423), and this rule holds good as to a House bill with Senate amendments (V, 5424). But there are exceptions to this rule, viz, the Journal does not accompany a proposed amendment to the table (V, 5435, 5436); the original question does not accompany an appeal (V, 5434); a resolution does not accompany another resolution with which it is connected, or a preamble (V, 5428, 5430); and a petition does not accompany the motion to receive it when the latter is laid on the table (V, 5431-5433).

The motion is not in order in Committee of the Whole (IV, 4719, 4720).

It may not be amended (V, 5754) or applied to the motions for the previous question (V, 5410-5411), to suspend the rules (V, 5405), to commit after the previous question is ordered (V, 5412-5414), or to any motion relating to the order of business (V, 5403, 5404), except the motion to discharge a committee (V, 5407). In one instance the motion to lay on the table was applied to the ordinary motion to refer (V, 5433); but this seems out of harmony with the general trend of rulings, which indicate that the secondary or privileged motions for disposal of a matter should not be laid on the table.

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As indicated in the rule, the motions to postpone are two in number and distinct: One to postpone to a day certain; the other to postpone indefinitely. Each must apply to the whole and not a part of the pending proposition (V, 5306). Neither may be entertained after the previous question is ordered (V, 5319-5321), or be applied to a special order providing for the consideration of a class of bills (V, 4958); but when a bill comes before the House under the terms of a special order which assigns a day merely, a motion to postpone may be applied to the bill (IV, 3177-3182). The motion is not used in Committee of the Whole, but a motion that a bill be reported with the recommendation that it be postponed is in order in that committee (IV, 4675).

The motion to postpone to a day certain may not specify the hour (V, 5307). It is debatable within narrow limits only (V, 5309, 5310), the merits of the bill to which it is applied not being within those limits (V, 5311-5315).

The motion to postpone indefinitely opens to debate all the merits of the proposition to which it is applied (V, 5316). It may not be applied to the motion to refer (V, 5317) or to suspend the rules (V, 5322), and it is reasonable to infer that it is equally inapplicable to the other secondary or privileged motions enumerated in the rule and to motions relating to the order of business.

There are in the rules of the House two motions to refer: The ordinary motion provided for in this rule, and the special motion provided by the rule for the previous question (Rule XVII, § 1; V, 5569). The motion to refer is sometimes made by using the words "to commit" or "to recommit;" but this change is one of form merely, and the three motions are practically the same (V, 5521). The motion may not be used in direct form in Committee of the Whole (IV, 4721). It may be made after the engrossment and third reading of a bill, even though the previous question may not have been ordered (V, 5562, 5563).

The simple motion to refer is debatable within narrow limits (V, 5054), but the merits of the proposition which it is proposed to refer may not be brought into the debate (V, 5564-5568). The motion to refer with instructions is debatable (V, 5561).

The motion to refer may specify that the reference shall be to a select committee (IV, 4401), and even that the committee be endowed with power to send for persons and papers (IV, 4402). The motion may be amended, as by adding instructions (V, 5521) on any germane subject (V, 6888), but it is not in order to propose as instructions anything that might not be proposed directly as an amendment (V, 5529-5541). Amendment in nature of substitute in order. (Speaker Clark, Aug. 16, 1912, 62d Cong., 2d sess., p. 110. For ruling in full see sec. 790.) Motion to commit with

§ 769. The motions to postpone.

§ 770. The motion to refer.

§ 771. Instructions with the motion to refer.

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§§ 772-774.

instructions, instructions must have been in order as an amendment to bill. (Speaker Clark, May 8, 1911, 62d Cong., 1st sess.) Motion to recommit with instructions to eliminate amendment adopted by the House not in order. After elaborate debate, on May 22, 1912, Speaker Clark ruled on question. (For ruling in full see sec. 948 of Digest). It has been a practice, however, to permit a motion to recommit with instructions that the committee report "forthwith," in which case the chairman makes report at once without awaiting action by the committee (V, 5545-5547) and the bill is before the House for immediate consideration (V, 5550). When a bill is recommitted it is before the committee as a new subject (IV, 4557; V, 5558), but the committee must confine itself to the instructions, if there be any (IV, 4404; V, 5526).

The rule specifies that the motions to postpone and refer shall not be repeated on the same day at the same stage of the question (V, 5301, 5591). Under the practice, also, a motion to adjourn may be repeated only after intervening business (V, 5373), such as debate (V, 5374), the ordering of the yeas and nays (V, 5376, 5377), decision of the Chair on a question of order (V, 5378), or reception of a message (V, 5375). The motion to lay on the table may also be repeated after intervening business (V, 5398-5400); but the ordering of the previous question (V, 5709), a call of the House (V, 5401), or decision of a question of order have been held not to be such intervening business, it being essential that the pending matter be carried to a new stage in order to permit a repetition of the motion (V, 5709).

5. The hour at which the House adjourns shall be entered on the Journal.

§ 773. Entry of hour of adjournment on the Journal.

This rule was adopted in 1837, and amended in 1880 (V, 6740).

6. On the demand of any Member, before the question is put, a question shall be divided

§ 774. Division of the question.

if it include propositions so distinct in substance that one being taken away a substantive proposition shall remain.

This rule was first adopted in 1789, and was amended in 1837 (V, 6107).

After the question has been put it may not be divided (V, 6162), nor after the yeas and nays have been ordered (V, 6160, 6161). But it may be demanded after the previous question has been ordered (V, 5468, 6149). (Speaker Clark, Apr. 18, 1912. For ruling see sec. 725 of Digest.)

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§§ 775, 776.

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The principle that there must be at least two substantive propositions in order to justify division is insisted on rigidly (V, 6108–6113), as failure to do so produces difficulties (III, 1725). In passing on a demand for division the Chair considers only substantive propositions and not the merits of the question presented (V, 6122). It seems to be most proper, also, that the division should depend on grammatical structure rather than on the legislative propositions involved (I, 394; V, 6119). But decisions have been made that a resolution affecting two individuals may be divided, although such division may involve a reconstruction of the text (I, 623; V, 6119–6121). The better practice seems to be, however, that this reconstruction of the text should be made by the adoption of a substitute amendment of two branches, rather than by interpretation of the Chair (II, 1621). But merely formal words, such as “resolved,” may be supplied by interpretation of the Chair (V, 6114–6118). It is not in order to demand a division of a related subject, as, when a resolution to adopt a series of rules not made a part of the resolution was before the House, it was held not in order to demand a separate vote on each rule (V, 6159). In voting on the engrossment or passage of a bill or joint resolution a separate vote on the various portions may not be demanded (V, 6144–6146), or on the preamble of a bill (V, 6147); but on a series of simple resolutions a division may be demanded (V, 6149). When a motion is made to lay several connected propositions on the table a division is not in order (V, 6138–6140). On a motion to commit with instructions it is not in order to demand a separate vote on the instructions or various branches thereof (V, 6134–6137). On a decision of the Speaker involving two distinct questions, there may be a division on appeal (V, 6157).

7. A motion to strike out and insert is indivisible, but a motion to strike out being lost shall neither preclude amendment nor motion to strike out and insert; * * *

§ 776. Motion to strike out and insert not divisible.

This rule was adopted in 1811, and amended in 1822 (V, 5767).

When it is proposed to strike out and insert not one but several connected matters, it is not in order to demand a separate vote on each of those matters (V, 6124, 6125), as when a substitute containing several resolutions is proposed; but after this substitute has been agreed to, it is in order to demand a division of the original resolution as amended (V, 6127, 6128). When, however, an amendment simply adding or inserting is proposed, it is in order to divide the amendment (V, 6129–6133).

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§§ 777, 778.

7. * * * and no motion or proposition on a subject different from that under consideration shall be admitted under color of amendment.

§ 777. Germane amendments.

This rule was adopted in 1789, and amended in 1822 (V, 5767, 5825). It introduced a principle not then known to the general parliamentary law (V, 5825), but of high value in the procedure of the House (V, 5866). The principle of the rule applies to a proposition by which it is proposed to modify the pending bill, and not to a portion of the bill itself (V, 6929); and hence an amendment simply striking out words already in a bill may not be ruled out as not germane (V, 5805). While a committee may report a bill embracing different subjects, it is not in order during consideration in the House to introduce a new subject by way of amendment (V, 5825). Whether or not an amendment be germane should be judged from the provisions of its text rather than from the purposes which circumstances may suggest (V, 5783, 5803). The rule that amendments should be germane applies to amendments reported by committees (V, 5806).

Under the later practice an amendment should be germane to the particular paragraph or section to which it is offered (V, 5811-5820), and an amendment inserting an additional section should be germane to the portion of the bill to which it is offered (V, 5822). To a bill amending a general law on a specific point an amendment relating to the terms of the law rather than to those of the bill was offered and ruled not to be germane. (Speaker Reed, V, 5808; also ruled by Speaker Cannon, Apr. 1, 1910, by 61st Cong., 1st sess., p. 4223; Speaker Clark, Dec. 5, 1912, 3d sess, 62d Cong. For ruling, see sec. 943.) An amendment germane to the bill as a whole, but hardly germane to any one section, may be offered at an appropriate place with notice of motions to strike out the following sections which it would supersede (V, 5823). In the consideration of Senate amendments to a House bill an amendment must be germane to the particular Senate amendment to which it is offered, it not being sufficient that it should be germane to provisions of the bill (V, 6188-6191).

In determining whether or not an amendment be germane, certain principles are established.

(a) One individual proposition may not be amended by another individual proposition even though the two belong to the same class. Thus, the following are not germane: To a bill proposing the admission of one Territory into the Union, an amendment for admission of another Territory (V, 5529); to a bill for the relief of one individual, an amendment proposing similar relief for another (V, 5826-5829); to a reso-

§ 778. One individual proposition not germane to another.

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lution providing a special order for one bill, an amendment to include another bill (V, 5834-5836); to a provision for extermination of the cotton-boll weevil, an amendment including the gypsy moth (V, 5832); to a provision for a clerk for one committee, an amendment for a clerk to another committee (V, 5833); to bill prohibiting transportation of messages relative to dealing in cotton futures, an amendment adding wheat, corn, etc., held out of order. (Speaker Clark. July 16, 1912, 62d Cong., 2d Sess., p. 9142.)

(b) A specific subject may not be amended by a provision general in nature, even when of the class of the specific subject (V, 5843-5846). Thus, the following are not germane: To a bill for the admission of one Territory into the Union, an amendment providing for the admission of several other Territories (V, 5837); to a bill relating to all corporations engaged in interstate commerce, an amendment relating to all corporations (V, 5842); to a bill modifying an existing law as to one specific particular, an amendment relating to the terms of the law rather than those of the bill (V, 5806-5808).

(c) A general subject may be amended by specific propositions of the same class. Thus, the following have been held to be germane: To a bill admitting several Territories into the Union, an amendment adding another Territory (V, 5838); to a bill providing for the construction of buildings in each of two cities, an amendment providing for similar buildings in several other cities (V, 5840); to a resolution embodying two distinct phases of international relationship, an amendment embodying a third (V, 5839). But to a resolution authorizing a class of employees in the service of the House, an amendment providing for the employment of a specified individual was held not to be germane (V, 5848-5849).

(d) Two subjects are not necessarily germane because they are related. Thus, the following have been held not to be germane: To a proposition relating to the terms of Senators, an amendment changing the manner of their election (V, 5882); to a bill relating to commerce between the States, an amendment relating to commerce within the several States (V, 5841); to a proposition to relieve destitute citizens of the United States in Cuba, a proposition declaring a state of war in Cuba and proclaiming neutrality (V, 5897); to a proposition for the appointment of a select committee to investigate a certain subject, an amendment proposing an inquiry of the Executive on that subject (V, 5891); to a bill granting a right of way to a railroad, an amendment providing for the purchase of the rail-

§ 779. A general provision not germane to a specific subject.

§ 780. Specific subjects germane to general propositions of the class.

§ 781. Subjects not necessarily germane because related.

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road by the Government (V, 5887); to a provision for the erection of a building for a mint, an amendment to change the coinage laws (V, 5884).

(e) An amendment which is germane, not being "on a subject different from that under consideration," belongs to a class illustrated by the following: To a bill providing for an interoceanic canal by one route, an amendment providing for a different route (V, 5909); to a bill providing for the reorganization of the Army, an amendment providing for the encouragement of marksmanship (V, 5910); to a proposition to create a board of inquiry, an amendment specifying when it shall report (V, 5915); to a bill relating to "oleomargarine and other imitation dairy products," an amendment on the subject of "renovated butter" (V, 5919); to a resolution rescinding an order for final adjournment, an amendment fixing a new date therefor (V, 5920); to a bill amending a general law in several particulars, an amendment providing for the repeal of the whole law (V, 5824).

8. Pending a motion to suspend the rules, the Speaker may entertain one motion that the House adjourn; but after the result thereon is announced he shall not entertain any other motion till the vote is taken on suspension.

§ 783. Dilatory motions pending motion to suspend rules.

This rule was adopted in 1868 (V, 5743). A motion for a recess (V, 5748-5751) and for a call of the House when there was no doubt of the presence of a quorum (V, 5747) were held to be dilatory motions within the meaning of the rule. But where a motion to suspend the rules has been made and, after one motion to adjourn has been acted on, a quorum has failed, another motion to adjourn has been admitted (V, 5744-5746).

9. At any time after the reading of the Journal it shall be in order, by direction of the appropriate committees, to move that the House resolve itself into the Committee of the Whole House on the state of the Union for the purpose of considering bills raising revenue, or general appropriation bills.

§ 784. Privileged motion for consideration of revenue and appropriation bills.

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§§ 785, 786.

Rule XVII

As early as 1835 the necessity of giving the appropriation bills precedence became apparent, and in 1837 a rule was adopted which established the principle which continues in the present rule (IV, 3072).

The motion to consider revenue bills and the motion to consider appropriation bills are of equal privilege (IV, 3075, 3076). The motion may designate the particular bill to be considered (IV, 3074). It is in order on Fridays (IV, 3081) and has precedence of the motion to go into Committee of the Whole House to consider the Private Calendar (IV, 3082-3085). It may be made on a "suspension day" as on other days (IV, 3080). But on Wednesdays the privilege of the motion is limited by Rule 24, paragraph 7. It may not be amended or debated and the previous question may not be demanded on it (IV, 3077-3079). Although highly privileged, it may not take precedence of a motion to reconsider (IV, 3087).

§ 785. Dilatory motions.

10. No dilatory motion shall be entertained by the Speaker.

This rule was adopted in 1890 (V, 5706) to make permanent a principle already enunciated in a ruling of the Speaker, who had declared that the "object of a parliamentary body is action, not stoppage of action" (V, 5713).

The Speaker has declined to entertain debate or appeal on a question as to the dilatoriness of a motion, as to do so would be to nullify the rule (V, 5731); but has recognized that the authority conferred by the rule should not be exercised until the object of the dilatory motion "becomes apparent to the House" (V, 5713-5714). Usually, but not always, the Speaker awaits a point of order from the floor before acting (V, 5715-5722). The rule has been applied to the motions to adjourn (V, 5721), to reconsider (V, 5735), to fix the time of five-minute debate in Committee of the Whole (V, 5734), and the question of consideration (V, 5731-5733). The point of "no quorum" has also been ruled out (V, 5724-5730). A demand for tellers has been held dilatory (V, 5735, 5736); but the constitutional right of the Member to demand the yeas and nays may not be overruled (V, 5737).

RULE XVII.

PREVIOUS QUESTION.

1. There shall be a motion for the previous question, which, being ordered by a majority of Members voting, if a quorum be present, shall have the effect to cut off

§ 786. The previous question.

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§§ 787.

all debate and bring the House to a direct vote upon the immediate question or questions on which it has been asked and ordered. The previous question may be asked and ordered upon a single motion, a series of motions allowable under the rules, or an amendment or amendments, or may be made to embrace all authorized motions or amendments and include the bill to its passage or rejection. It shall be in order, pending the motion for, or after the previous question shall have been ordered on its passage, for the Speaker to entertain and submit a motion to commit, with or without instructions, to a standing or select committee.

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The House adopted a rule for the previous question in 1789, but it was not turned into an instrument for closing debate until 1811. At various times it has been perfected by amendments shown by experience to be necessary (V, 5443-5445).

The previous question is the only motion used for closing debate in the House itself (V, 5456). It is not in order in Committee of the Whole (IV, 4716). The motion may not include a provision that it shall take effect at a certain time (V, 5457). Forty minutes of debate are allowed whenever the previous question is ordered on a proposition on which there has been no debate (V, 6821; see Rule XXVII, § 3); but if there has been debate, even though brief, before the ordering of the previous question, the forty minutes are not allowed (V, 5499-5501). This preliminary debate should be on the merits of the question if the forty minutes of debate are to be denied for reason of it (V, 5502). The forty minutes should be demanded before division has begun on the main question (V, 5496). It may not be demanded on incidental motions, but is confined to the main question (V, 5497, 5498). It may not be demanded on a proposition which has been debated in Committee of the Whole (V, 5505), or on a conference report if the subject-matter of the report was debated before being sent to conference (V, 5506, 5507). When the previous question is ordered merely on an amendment which has not been debated, the forty minutes are allowed

§ 787. Effect of previous question on debate.

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(V, 5503); but the same liberty of debate is not allowed when the question covers both an undebated amendment and the original proposition (V, 5504). It was also denied on a resolution to correct an error in an enrolled bill (V, 5508). The forty minutes is divided, one half to those favoring and the other half to those opposing (V, 5495).

The provisions of the rule define the application of the previous question with considerable accuracy. It may not be moved on more than one bill except by the unanimous consent of the House (V, 5461-5464), or on motions to agree to a conference report and also to dispose of differences not included in the report (V, 5465). It may apply to the main question and a pending motion to refer (V, 5466, Speaker Clark, 62d Cong., 1st sess., May 17, 1911). When a bill is reported from the Committee of the Whole with the enacting words stricken out, it may be applied to the motion to concur without covering further action on the bill (V, 5342). During consideration "in the House as in Committee of the Whole" it may be demanded while Members still desire to offer amendments (IV, 4926-4929), but it may not be moved on a single section of a bill (IV, 4930). When ordered on a resolution with a preamble there is doubt of its application to the preamble, unless the motion specifies (V, 5469, 5470). It may be moved on a series of resolutions, but this does not preclude a division of the resolutions on the vote (V, 5468). It is often ordered on undebatable propositions to prevent amendment (V, 5473, 5490), but may not be moved on a motion that is both undebatable and unamendable (IV, 3077). It applies to questions of privilege as to other questions (II, 1256; V, 5459, 5460).

The Member in charge of the bill and having the floor may demand the previous question although another Member may propose a motion of higher privilege; but the motion of higher privilege must be put first (V, 5480); and if the Member in charge of the bill claims the floor in debate another Member may not demand the previous question (II, 1458); but having the floor any Member may make the motion although the effect may be to deprive the Member in charge of the control of the bill (V, 5476). And if, after debate, the Member in charge of the bill does not move the previous question, another Member may (V, 5475); but where a Member intervenes on a pending proceeding to make a preferential motion, as the motion to recede from a disagreement with the Senate, he may not move the previous question on that motion as against the rights of the Member in charge (II, 1459).

§ 789. The right to move the previous question.

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The motion to commit under this rule applies to resolutions of the House alone as well as to bills (V, 5572, 5573), to Senate amendments to a House bill (V, 5575), and to a motion to amend the Journal (V, 5574). It does not apply to a report from the Committee on Rules (V, 5593-5601), or to a pending amendment to a proposition in the House (V, 5573).

The motion to commit may be made pending the demand for the previous question on the passage, whether a bill or resolution be under consideration (V, 5576); but when the demand covers all stages of the bill to the final passage the motion to commit is made only after the third reading, and is not in order pending the demand or before the engrossment or third reading (V, 5578-5581). When separate motions for the previous question are made, respectively, on the third reading and on the passage of a bill, the motion to commit should be made only after the previous question is ordered on the passage (V, 5577). When the previous question has been ordered on a simple resolution (as distinguished from a joint resolution) and a pending amendment, the motion to commit should be made after the vote on the amendment (V, 5585-5588). It was formerly held that the opponents of a bill had no claim to prior recognition to make the motion (II, 1456), but under Rule XVI, § 4, the prior right to recognition is given to an opponent. When the House refuses to order a bill to be engrossed and read a third time the motion to commit may not be made (V, 5602, 5603).

The motion to refer under this rule is not debatable (V, 5582); but may be amended, as by adding instructions, unless such amendment be precluded by moving the previous question (V, 5582-5584) unless previous question ordered, amendment in nature of substitute in order to motion to commit with instructions. Speaker Clark, August 16, 1912 (2d sess. 62d Cong., p. 11090), ruled as follows:

"Mr. Norris made the point of order that the amendment offered by Mr. Moon of Tennessee is not in order because it strikes out all the motion of the gentleman from Illinois [Mr. Mann] and inserts a different one, and in effect takes away from the minority the right to make a motion to recommit.

"The Speaker overruled the point of order and said:

"The Chair thinks that when the Chair has given to the minority a right to make a motion, although Rule XVII does not recognize and does not require it, though Rule XVI does, and when the majority exercises that right under the preference given by the item to make the motion, then the motion is in the hands of the House and subject to every rule of the House and to every rule of amendment. But there is no question in the mind of the Chair but that the motion of the gentleman from Tennessee [Mr. Moon]

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is germane to the subject, and it does not take away from the minority the preferential right in the matter, but it has a right to say whether it prefers the proposition of the minority or the majority. As a matter of fact, nobody can tell who is the majority or who is the minority on this kind of a proposition. If it were a political question, you might get at it.' ”

Motion to commit with instructions, instructions must be germane to bill before the House. To a bill amendatory of an existing law as to one specific particular, an amendment relating to the terms of the law rather than to those of the bill was held not to be germane. (Speaker Reed, V, 5808; Speaker Cannon, Apr. 1, 1910, 61st Cong.; Speaker Clark, Dec. 5, 1912, 62d Cong. For full ruling of Speaker Clark see sec. 943 of Digest.) Only one motion to commit is in order (V, 5577, 5582, 5585); but where a bill is recommitted under this motion, and, having been reported again, is again subjected to the previous question, another motion to commit is in order after the engrossment and third reading (V, 5591). The motion may not be accompanied by a preamble (V, 5589); and it may not be laid on the table (V, 5412-5414).

When a special order declares that at a certain time the previous question shall be considered as ordered on a bill to the final passage, it has usually, but not always, been held that a motion to commit is precluded (IV, 3207-3209).

The motion to lay on the table may not be applied to the previous question (V, 5410, 5411); nor may it be applied to the main question after the previous question has been ordered (V, 5415-5422), or after the yeas and nays have been ordered on the demand for the previous question (V, 5408, 5409).

The motion to postpone may not be applied to the main question after the previous question has been ordered (V, 5319-5321). The previous question may be applied both to the main question and a pending motion to refer (V, 5342).

2. A call of the House shall not be in order after the previous question is ordered, unless it shall appear upon an actual count by the Speaker that a quorum is not present.

§ 792. Relation of previous question to failure of a quorum.

This rule was adopted in 1860 (V, 5447).

3. All incidental questions of order arising after a motion is made for the previous question, and pending such motion, shall be decided, whether on appeal or otherwise, without debate.

§ 793. Questions of order pending the motion for the previous question.

This rule was adopted in 1837 to prevent delay by debate on points of order after the demand for the previous question (V, 5448).

A question of privilege relating to the integrity of action of the House itself has been distinguished from ordinary questions of order and has been thrown open to debate after the ordering of the previous question (V, 2532).

RULE XVIII.

RECONSIDERATION.

1. When a motion has been made and carried or lost, it shall be in order for any member of the majority, on the same or succeeding day, to move for the reconsideration thereof, and such motion shall take precedence of all other questions except the consideration of a conference report or a motion to adjourn, and shall not be withdrawn after the said succeeding day without the consent of the House, and thereafter any Member may call it up for consideration: *Provided*, That such motion, if made during the last six days of a session, shall be disposed of when made.

§ 794. The motion to reconsider.

The motion to reconsider, used in the Continental Congress and in the House of Representatives from its first organization, in 1789, was first made the subject of a rule in 1802; and at various times this rule has been perfected by amendments (V, 5605).

The motion is not used in Committee of the Whole (IV, 4716-4718), or in the House during the absence of a quorum when the vote proposed to be reconsidered requires a quorum (V, 5606). But on votes incident to a call

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of the House the motion to reconsider may be entertained and also laid on the table, although a quorum may not be present (V, 5607, 5608).

The mover of a proposition is entitled to prior recognition to move to reconsider (II, 1454). A Member may make the motion at any time without thereby abandoning a prior motion made by himself and pending (V, 5610). A Delegate may not make the motion (II, 1292). The provision of the rule that the motion may be made "by any member of the majority" is construed, in case of a tie vote, to mean any member of the prevailing side (V, 5615, 5616), and the same construction applies in case of a two-thirds vote (II, 1656; V, 5617, 5618). Where the yeas and nays have not been ordered recorded in the Journal, any Member, irrespective of whether he voted with the majority or not, may make the motion to reconsider (V, 5611-5613, 5689); but a Member who was absent (V, 5619) or who was paired in favor of the majority contention and did not vote, may not make the motion (V, 5614).

The precedence given the motion by the rule permits it to be made even after the previous question has been demanded (V, 5656) or while it is operating (V, 5657-5662). The motion to reconsider the vote on the engrossment of a bill may be admitted after the previous question has been moved on a motion to postpone (V, 5663), and a motion to reconsider the vote on the third reading may be made and acted on after a motion for the previous question on the passage has been made (V, 5656). It also takes precedence of the motion to go into Committee of the Whole, or even of a demand that the House return to committee after the appearance of a quorum (IV, 3087). But in a case wherein the House had passed a bill and disposed of a motion to reconsider the vote on its passage, it was held to be too late to reconsider the vote sustaining the decision of the Chair which brought the bill before the House (V, 5652). After a conference has been agreed to and the managers for the House appointed, it is too late to move to reconsider the vote whereby the House acted on the amendments in disagreement (V, 5664). While the motion has high privilege for entry, it may not be considered while another question is before the House (V, 5673-5676). When it relates to a bill belonging to a particular class of business, consideration of the motion is in order only when that class of business is in order (V, 5677-5681). It may then be called up at any time; but is not the regular order until called up (V, 5682). When once entered it may remain pending indefinitely, even until a succeeding session of the same Congress (V, 5684).

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A motion to reconsider may be entertained, although the bill or resolution to which it applies may have gone to the other House or the President (V, 5666-5668). The fact that the House had informed the Senate that it had agreed to a Senate amendment to a House bill was held not to prevent a motion to reconsider the vote on agreeing (V, 5672). When a motion is made to reconsider a vote on a bill which has gone to the Senate, a motion to recall the bill is privileged (V, 5669-5671). The motion to reconsider may be applied once only to a vote ordering the previous question (V, 5655), and may not be applied to a motion for the previous question which has been partially executed (V, 5653, 5654); but a vote agreeing to an order of the House has been reconsidered, although the execution of the order had begun (III, 2028; V, 5665).

The motion may not be applied to negative votes on motions to adjourn (V, 5620-5622), or for a recess (V, 5625), or to go into Committee of the Whole (V, 5368). In one instance, however, the Chair admitted a motion to reconsider an affirmative vote on the motion to go into Committee of the Whole (V, 5368). Motions to reconsider negative votes on motions to fix the day to which the House shall adjourn have been the subjects of conflicting rulings (V, 5623, 5624). It is in order to reconsider a vote postponing a bill to a day certain (V, 5643); but not to reconsider a negative decision of the question of consideration (V, 5626, 5627), or a vote on suspension of the rules (V, 5645, 5646). A vote whereby a second is ordered may be reconsidered (V, 5642). The motion to reconsider a vote on a proposition having been once agreed to, and the said vote having again been taken, a second motion to reconsider may not be made unless the nature of the proposition has been changed by amendments (V, 5685-5688).

A bill is not considered passed or an amendment agreed to if a motion to reconsider is pending, the effect of the motion being to suspend the original proposition (V, 5704); and the Speaker declines to sign an enrolled bill until a pending motion to reconsider has been disposed of (V, 5705). But when the Congress expires leaving unacted on a motion to reconsider the vote whereby a simple resolution of the House has been agreed to, it is probable that the resolution would be operative; and where a bill has been enrolled, signed by the Speaker, and approved by the President, it is undoubtedly a law, although a motion to reconsider may not have been disposed of (V, 5704, footnote). A Member-elect may not take the oath until a motion to reconsider the vote determining his title is disposed of (I, 335); but when, in such a case, the motion is disposed of, the right to be sworn is complete (I, 622). When the motion to reconsider is decided in the affirmative the question

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immediately recurs on the question reconsidered (V, 5703). When a vote whereby an amendment has been agreed to is reconsidered the amendment becomes simply a pending amendment (V, 5704). When the vote ordering the previous question is reconsidered it is in order to withdraw the motion for the previous question, the "decision" having been nullified (V, 5357). When the previous question has been ordered on a series of motions and its force has not been exhausted the reconsideration of the vote on one of the motions does not throw it open to debate (V, 5493); but when a vote on a single proposition taken under the operation of the previous question is reconsidered the main question stands divested of the previous question and may be debated (V, 5491, 5492).

The motion to reconsider is agreed to by majority vote, even when the vote reconsidered requires two-thirds for affirmative action (II, 1656; V, 5617, 5618), or when only one-fifth is required for affirmative action, as in votes ordering the yeas and nays (V, 5689-5692, 6029). But one motion to reconsider the yeas and nays having been acted on, another motion to reconsider is not in order (V, 6037).

A vote on the motion to lay on the table may be reconsidered whether the decision be in the affirmative (V, 5628, 5695, 6288) or in the negative (V, 5629). It is in order to reconsider the vote laying an appeal on the table (V, 5630), although during proceedings under a call of the House this motion was once ruled out (V, 5631). The motion to reconsider may not be applied to the vote whereby the House has laid another motion to reconsider on the table (V, 5632-5640).

A motion to reconsider is not debatable if the motion proposed to be reconsidered was not debatable (V, 5694-5699); and the latest ruling is that the application of the previous question makes an undebatable proposition (V, 5700, 5701).

2. No bill, petition, memorial, or resolution referred to a committee, or reported therefrom for printing and recommitment, shall be brought back into the House on a motion to reconsider; * * *

This rule was first adopted in 1860, and amended in 1872, to prevent a practice of using the privilege of the motion to reconsider to secure consideration of bills otherwise not in order (V, 5647). There is a question as to

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whether or not the rule applies to a case wherein the House, after considering a bill, recommits it (V, 5648-5650). After a committee has reported a bill it is too late to reconsider the vote by which it was referred (V, 5651).

§ 803. Requirement that reports of committees be in writing and be printed.

2. * * * and all bills, petitions, memorials, or resolutions reported from a committee shall be accompanied by reports in writing, which shall be printed.

This rule was adopted in 1880 (V, 5647).

The House insists on observance of this rule (IV, 4655) and does not receive verbal reports as to bills (IV, 4654). But the sufficiency of a report is passed on by the House and not by the Speaker; (II, 1339, IV, 4653). A report is not necessarily signed by all those concurring (II, 1274) or even by any of those concurring, but minority views are signed by those submitting them (IV, 4671).

RULE XIX.

OF AMENDMENTS.

When a motion or proposition is under consideration a motion to amend and a motion to amend that amendment shall be in order, and it shall also be in order to offer a further amendment by way of substitute, to which one amendment may be offered, but which shall not be voted on until the original matter is perfected, but either may be withdrawn before amendment or decision is had thereon. Amendments to the title of a bill or resolution shall not be in order until after its passage, and shall be decided without debate.

§ 804. Amendments to text and to title.

This rule was adopted in 1880, with an amendment adding the portion in relation to the title in 1893. The rule of 1880, however, merely stated in form of rule what had been the practice of the House for many years (V, 5753).

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It is not in order to offer more than one motion to amend of the same nature at a time (V, 5755), and two independent amendments may be voted on at once only by unanimous consent of the House (V, 5779). But the four motions specified by the rule may be pending at one and the same time (V, 5753). An amendment in the third degree is not specified by the rule and is not permissible (V, 5754), even when the third degree is in the nature of a substitute for an amendment to a substitute (V, 5791). But a substitute amendment may be amended by striking out all after its first word and inserting a new text (V, 5793, 5794), as this, while in effect a substitute, is not technically so, for the substitute always proposes to strike out all after the enacting or resolving words in order to insert a new text (V, 5785, footnote). An amendment in the nature of a substitute may be proposed before amendments to the original text have been acted on, but may not be voted on until such amendments have been disposed of (V, 5753, 5787). When a bill is considered by sections or paragraphs, an amendment in the nature of a substitute is properly offered after the reading for amendment is concluded (V, 5788). But when it is proposed to offer a single substitute for several paragraphs of a bill which is being considered by paragraphs, the substitute may be moved to the first paragraph, with notice that, if agreed to, motions will be made to strike out the remaining paragraphs (V, 5795). The substitute amendment, as well as the original proposition, may be perfected by amendments before the vote on it is taken (V, 5786). An amendment in the nature of a substitute having been agreed to, the vote is then taken on the original proposition as amended (II, 983; V, 5799, 5800).

While the rule provides that either an ordinary or substitute amendment may be withdrawn in the House (V, 5753) or "in the House as in Committee of the Whole" (IV, 4935), it may not be withdrawn in Committee of the Whole (V, 5221).

§ 806. Withdrawal of the motion to amend.

The motion to refer, the previous question not being ordered, has precedence of the motion to amend (V, 5555). Amendments reported by a committee are acted on before those offered from the floor (V, 5773); but there is a question as to the extent to which the chairman of the committee reporting a bill should be recognized to offer amendments to perfect it in preference to other Members (II, 1450). The motion to strike out the enacting clause has precedence of the motion to amend, and may be offered while an amendment is pending (V, 5328-5331).

§ 807. Precedence of the motion to amend.

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§§ 808-810.

With some exceptions an amendment may attach itself to secondary and privileged motions (V, 5754). Thus, the motions to § 808. Relation of the motion to amend to other motions. postpone, refer, amend, for a recess, and to fix the day to which the House shall adjourn may be amended (V, 5754). But the motions for the previous question, to lay on the table, to adjourn (V, 5754) and to go into Committee of the Whole to consider a privileged bill may not be amended (IV, 3078, 3079).

RULE XX.

OF AMENDMENTS OF THE SENATE.

Any amendment of the Senate to any House bill shall be subject to the point of order that it shall first be considered in the Committee of the Whole House on the state of the Union if, originating in the House, it would be subject to that point. § 809. Consideration of Senate amendments in Committee of the Whole.

This rule was adopted in 1880 to prevent a practice by which Senate amendments of the class described had escaped consideration in Committee of the Whole (IV, 4796).

A Senate amendment which is a modification merely of a House proposition, like the increase or decrease of the amount of an appropriation, and does not involve new and distinct expenditure, is not required to be considered in Committee of the Whole (IV, 4797-4806). When in the House an amendment is offered to provide an appropriation for another purpose than that of the Senate amendment, the House goes into Committee of the Whole to consider it (IV, 4795). When an amendment is referred, the entire bill goes to the Committee of the Whole (IV, 4808), but the committee considers only the Senate amendment (V, 6192). It usually considers all the amendments, although they may not all be within the rule requiring such consideration (V, 6195). The House may, however, proceed to the disposition of those Senate amendments not requiring consideration in Committee of the Whole before going into committee on those affected by the rule (IV, 4807). In Committee of the Whole a Senate amendment, even though it be very long, is considered as an entirety and not by paragraphs or sections (V, 6194). It has been held that each amendment is subject to general debate and amendment under the five-minute rule (V, 6193, 6196). § 810. Practice in considering Senate amendments in Committee of the Whole.

RULE XXI.

ON BILLS.

1. Bills and joint resolutions on their passage shall be read the first time by title and the second time in full, when, if the previous question is ordered, the Speaker shall state the question to be: Shall the bill be engrossed and read a third time? and, if decided in the affirmative, it shall be read the third time by title, unless the reading in full is demanded by a Member, and the question shall then be put upon its passage.

This rule was first adopted in 1789, and was amended in 1794 and 1880 (IV, 3391).

Formerly a bill was read for the first time by title at the time of its introduction, but since 1890 all bills have been introduced by filing them with the Clerk, thus rendering a reading by title impossible at that time (IV, 3391). But the titles of all bills introduced are printed in the Journal and Record, thus carrying out the real purposes of the rule. The second reading formerly occurred in the House before commitment; but as the processes of handling bills have been shortened, the second reading now occurs for bills considered in the House alone when they are taken up for action, and, for bills considered in Committee of the Whole, when they are taken up in that committee. A bill read in full in Committee of the Whole and reported therefrom is not read in full again when acted on by the House (IV, 3409, 3410, 4916). But when a bill is taken up in Committee of the Whole its reading in full may be demanded before general debate begins, although it may have just been read in the House (IV, 4738). The Speaker makes it his duty, ordinarily, to object to a request for unanimous consent that a bill may be acted on without being read (IV, 3390).

The right to demand the full reading of the engrossed copy of a bill, guaranteed by the rule, exists only immediately after it has passed to be engrossed and before it has been read a third time by title (IV, 3400, 3403, 3404), or the yeas and nays have been ordered on the passage (IV, 3402).

This right to demand the reading in full may cause the bill to be laid aside

§ 811. Reading, engrossment, and passage of bills.

§ 812. First and second readings.

§ 813. The third reading after engrossment.

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until engrossed, even though the previous question may be ordered (IV, 3395-3399). A special order does not deprive the Member of his right to demand the reading of the engrossed bill (IV, 3401), and a privileged motion may not intervene before the third reading (IV, 3405). A vote on the passage has been reconsidered in order to remedy the omission to read a bill a third time (IV, 3406). Senate bills are not engrossed in the House; but are ordered to a third reading.

A bill in the House (as distinguished from the Committee of the Whole) is amended pending the engrossment and third reading (V, 5781). The question on engrossment and third reading being decided in the negative the bill is rejected (IV, 3420, 3421). A bill must be considered and voted on by itself (IV, 3408). Where the two Houses pass similar but distinct bills on the same subject it is necessary that one or the other House act again on the subject (IV, 3386). The requirement of a two-thirds vote for proposed constitutional amendments has been construed in the later practice to apply only to the vote on the final passage (V, 7029, 7030). A bill having been rejected by the House, a similar but not identical bill on the same subject was afterwards held to be in order (IV, 3384).

2. No appropriation shall be reported in any general appropriation bill, or be in order as an amendment thereto, for any expenditure not previously authorized by law, unless in continuation of appropriations for such public works and objects as are already in progress. Nor shall any provision in any such bill or amendment thereto changing existing law be in order, except such as being germane to the subject matter of the bill shall retrench expenditures by the reduction of the number and salary of the officers of the United States, by the reduction of the compensation of any person paid out of the Treasury of the United States, or by the reduction of amounts of money covered by the bill: *Provided*, That it shall be in order further to amend such bill

§ 815. Unauthorized appropriations and legislation on general appropriation bills.

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upon the report of the committee or any joint commission authorized by law or the House Members of any such commission having jurisdiction of the subject matter of such amendment, which amendment being germane to the subject matter of the bill shall retrench expenditures.

This rule was first adopted in 1837, to prevent delay of appropriation bills because of contention over propositions of legislation. It has been amended at various times, especially by a clause permitting legislation which tended to reduce expenditures; but in 1885 substantially the present language was adopted (IV, 3578).

As all bills making or authorizing appropriations require consideration in Committee of the Whole, it follows that the enforcement of the rule must ordinarily occur during consideration in Committee of the Whole, where the Chair, on the raising of a point of order, may rule out any portion of the bill in conflict with the rule (IV, 3811). No report of parts of the bill thus ruled out is made to the House. It is the practice, therefore, for some Member to reserve points of order when a general appropriation bill is referred to Committee of the Whole, in order that portions in violation of rule may be eliminated in the committee (V, 6921-6925). Points of order against unauthorized appropriations or legislation on general appropriation bills may be made as to the whole or a portion only of a paragraph (IV, 3652; V, 6881), and the fact that a point is made against a portion of a paragraph does not prevent another point against the whole paragraph (V, 6882). And if a portion of a proposed amendment be out of order, it is sufficient for the rejection of the whole amendment (V, 6878-6880); and where a point is made against the whole of a paragraph the whole must go out, but it is otherwise when the point is made only against a portion (V, 6884, 6885).

The authorization by existing law required in the rule to justify appropriations may be made also by a treaty if it has been ratified by both the contracting parties (IV, 3587). And a resolution of the House has been held sufficient authorization for an appropriation for the salary of an employee of the House (IV, 3656-3658) even though the resolution may have been agreed to only by a preceding House (IV, 3660). The omission to appropriate during a series of years for an object authorized by law does not

§ 816. Points of order on general appropriation bills.

§ 817. Authorization of law for appropriations.

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repeal the law, and consequently an appropriation when proposed is not subject to the point of order (IV, 3595). The law authorizing each head of a department to employ such numbers of clerks, messengers, copyists, watchmen, laborers, and other employees as may be appropriated for by Congress from year to year is held to authorize appropriations for those positions not otherwise authorized by law (IV, 3669, 3675, 4739); but this law does not apply to offices not within departments or not at the seat of Government (IV, 3670-3764). By a general provision of law appropriations for investigations and the acquirement and diffusion of information by the Agricultural Department on subjects related to agriculture are generally in order in the agricultural appropriation bill (IV, 3649). It has once been held that this law would authorize also appropriations for the instrumentalities of such investigations (IV, 3615); but these would not include the organization of a bureau to conduct the work (IV, 3651). The law does not either authorize general investigations by the department (IV, 3652), or cooperation with state investigations (IV, 3650), or the investigation of foods in relation to commerce (IV, 3647, 3648), or the compiling of tests at an exposition (IV, 3653).

Judgments of courts certified to Congress in accordance with law or authorized by treaty (IV, 3634, 3635, 3644) and auditing under authority of law have been held to be authorization for appropriations for the payment of claims (IV, 3634, 3635). But unadjudicated claims (IV, 3628), even though ascertained and transmitted by an executive officer (IV, 3625-3640), and findings filed under the Bowman Act do not constitute authorization (IV, 3643).

§ 818. Authorizations for claims and salaries.

An appropriation for an object not otherwise authorized does not make authorization to justify a continuance of the appropriation another year (IV, 3588, 3589), and the mere appropriation for a salary does not create an office so as to justify appropriations in succeeding years (IV, 3590, 3672, 3697), it being a general rule that propositions to appropriate for salaries not established by law or to increase salaries fixed by law are out of order (IV, 3664-3667, 3676-3679). But an exception to these general principles is found in the established practice that in the absence of a general law fixing a salary the amount appropriated in the last appropriation bill has been held to be the legal salary (IV, 3687-3696). A law having established an office and fixed a salary, it is not in order to provide for an unauthorized office and salary in lieu of it (IV, 3680). Executive departments being authorized by section 169, Revised Statutes, to employ such clerks, etc., as Congress may appropriate for from year to year, held to be authority for making appropriation to pay salary of such clerk, etc. (IV, 3669).

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On December 6, 1912, third session Sixty-second Congress, Chairman Garner ruled as follows: "It seems to the Chair that the first question for the Chair to ascertain is whether or not section 169 of the Revised Statutes authorizes these clerks or whether the head of a department has the right to employ these five clerks. In 1906 Mr. Hull, of Iowa, was in the chair, and this identical question came up and was decided by him on a point of order made by Mr. Tawney upon clerks of a similar nature in the War Department. Mr. Hull held at that time, quoting section 169, that where the statute had authorized the heads of the department to employ clerks and other laborers that it was in order, and he overruled the point of order. He used this language:

" 'The first question is, What law authorizes this appropriation? The only law referred to is that contained in section 169 of the Revised Statutes, which is as follows:'

" 'Here he quotes the statute. This is a similar case, where the gentleman from New York [Mr. Fitzgerald] cites the statute, section 169, as authority for this legislation. Mr. Hull made this comment:

" 'The next question, of course, is whether these clerks referred to in the items to which objection has been made are to be employed by the head of a department and in his department. The gentleman from Iowa, Mr. Hull, is quite correct in his statement of the ruling made by the occupant of the chair, Mr. Hopkins, as referred to on page 2404 of the Record, third session Fifty-fifth Congress, but it appears that at that time the Chairman of the Committee of the Whole was not familiar with the ruling of the Attorney General, which has been submitted to.'

" 'And he went on and held that these clerks were to be employed as contemplated in section 169 of the Revised Statutes. The Chair is of the opinion that section 169 would apply to the clerks in this item, and therefore overrules the point of order.'

A reappropriation for a purpose authorized by law is in order (IV, 3591-3593), as is also the return of an unexpended balance to the Treasury (IV, 3594).

An appropriation for a public work in excess of a fixed limit of cost (IV, 3583, 3584), or for extending a service beyond the limits assigned by an executive officer exercising a lawful discretion (IV, 3598), or by actual law (IV, 3582, 3585), or for purposes prohibited by law are out of order (IV, 3580, 3581, 3702). But the mere appropriation of a sum "to complete" a work does not fix a limit of cost such as would exclude future appropriations (IV, 3761). In the administration of the rule it is the practice that those upholding an item of appropriation should have the burden of showing the law authorizing it (IV, 3597).

§ 819. Authorizations for public works.

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The rule requiring appropriations to be authorized by existing law excepts those "in continuance of appropriations for such public works and objects as are already in progress" (IV, 3578). But an appropriation in violation of existing law or to extend a service beyond a fixed limit (IV, 3585) is not in order as the continuance of a public work (IV, 3702-3724). Interruption of a work does not necessarily remove it from the privileges of the rule (IV, 3705-3708); but the continuation of the work must not be so conditioned in relation to place as to become a new work (IV, 3704). It has been held that a work has not been begun within the meaning of the rule when an appropriation has been made for a site for a public building (IV, 3785), or when a commission has been created to select a site or when a site has actually been selected for a work (IV, 3762-3763), or when a survey has been made (IV, 3782-3784). By "public works and objects already in progress" are meant tangible matters like buildings, roads, etc., and not duties of officials in executive departments (IV, 3709-3713), or the continuance of a work indefinite as to completion and intangible in nature like the gauging of streams (IV, 3714, 3715).

Thus the continuation of the following works has been admitted: A § 821. Examples topographical survey (IV, 3796, 3797), a geological map (IV, 3795), marking of a boundary line (IV, 3717), marking graves of soldiers (IV, 3788), a list of claims (IV, 3717), and recoinage of coins in the Treasury (IV, 3807); but the following works have not been admitted: Investigation of materials, like coal (IV, 3721), scientific investigations (IV, 3719), duties of a commission (IV, 3720), extension of foreign markets for goods (IV, 3722), printing of a series of opinions indefinite in continuance (IV, 3718), free evening lectures in the District of Columbia (IV, 3789), continuation of an extra compensation for ordinary facility for carrying the mails (IV, 3808), although the continuation of certain special mail facilities has been admitted (IV, 3804-3806). But appropriations for rent and repairs of buildings or government roads (IV, 3793, 3798) and bridges (IV, 3803) have been admitted as in continuance of a work (IV, 3777, 3778), although it is not in order as such to provide for a new building in place of one destroyed (IV, 3606). Nor is it in order to repair paving adjacent to a public building but in a city street, although it may have been laid originally by the Government (IV, 3779). The purchase of adjoining land for a work already established has been admitted under this principle (IV, 3766-3773) and also additions to existing buildings in cases where no limits of cost have been shown (IV, 3774, 3775). But the purchase of a separate and detached lot of land is not admitted (IV, 3776).

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Appropriations for new buildings at government institutions have sometimes been admitted (IV, 3741-3750) when intended for the purposes of the institution (IV, 3747); but later decisions, in view of the indefinite extent of the practice made possible by the early decisions, have ruled out propositions to appropriate for new buildings in navy-yards (IV, 3755-3759) and other establishments (IV, 3751-3754). Appropriations for new schoolhouses in the District of Columbia (IV, 3750), for new army hospitals (IV, 3740), for new light-houses (IV, 3728), armor-plate factories (IV, 3737-3739), and for additional playgrounds for children in the District of Columbia (IV, 3792) have also been held not to be in continuance of a public work.

By a broad construction of the rule an appropriation for a new and not otherwise authorized vessel of the navy is held to be for continuance of a public work (IV, 3723, 3724); but this interpretation is confined to naval vessels, and does not apply to vessels in other services, like the Coast Survey or Lighthouse Department (IV, 3725-3726), or to floating or stationary dry docks (IV, 3729-3736). The construction of a submarine cable in extension of one already laid was held not to be the continuance of a public work (IV, 3716).

The provision of the rule forbidding in any general appropriation bill a "provision changing existing law" is construed to mean the enactment of law where none exists (IV, 3812, 3813). Existing law may be repeated verbatim in an appropriation bill (IV, 3814, 3815), but the slightest change of the text causes it to be ruled out (IV, 3817). The reenactment from year to year of a law intended to apply during the year of its enactment only is not relieved, however, from the point that it is legislation (IV, 3822). A provision proposing to construe existing law is in itself a proposition of legislation and therefore not in order (IV, 3936-3938). Also a proposition to change a rule of the House is subject to the point of order (IV, 3819). The object to be appropriated for may be described without violating the rule (IV, 3864). Propositions to establish affirmative directions for executive officers (IV, 3854-3859), even in cases where they may have discretion under the law so to do (IV, 3853), or to take away an authority or discretion conferred by law (IV, 3862, 3863), are subject to the point of order. Limits of cost for public works may not be made or changed (IV, 3581, 3761, 3865-3867) or contracts authorized (IV, 3868-3870).

In rare instances the House, by agreeing to a report from the Committee on Rules or by adopting an order under suspension of the rules (IV, 3845),

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has authorized legislation on general appropriation bills (IV, 3260-3263, 3839-3844). The principle seems to be generally accepted that the House proposing legislation on a general appropriation bill should recede if the other House persists in its objection (IV, 3904-3908). A paragraph which proposes legislation being permitted to remain may be perfected by a germane amendment (IV, 3823-3835, 3838), but this does not permit an amendment which adds additional legislation (IV, 3836, 3837, 3862).

Chairman Underwood on May 3, 1912, Sixty-second Congress, second session, page 5847, made the following ruling:

"The Chair is ready to rule. The law at present provides that clerk hire for each Member of Congress shall be \$1,200. That is the existing law. The committee has reported a paragraph to this bill providing that the clerk hire of Members of Congress shall be \$1,500 a year. If a point of order had been made against the paragraph in time the Chair would have held that it was subject to the point of order, because it was contrary to existing law. No point of order having been made against the paragraph, it comes before this House in the condition that a new amendment would come before the House that was offered that was subject to the point of order, and the point of order not having been made, it would be in order to offer a germane amendment. Now, in Hinds' Precedents, volume 4, paragraph 3823, the same proposition was before the House, and the Chair will ask the Clerk to read the paragraph.

"The Clerk read as follows:

"Hinds' Precedents, volume 4, paragraph 3823, page 553:

"A paragraph which proposes legislation in a general appropriation bill being permitted to remain, it may be perfected by a germane amendment. On December 21, 1896, the House, in Committee of the Whole House on the state of the Union, was considering the legislative, executive, and judicial appropriation bill, and the paragraph relating to the organization of the Library of Congress had been reached, when Mr. Frederick H. Gillett, of Massachusetts, offered this amendment:

"All the above appointments, except the librarian and two assistants, are to be made from lists of eligibles to be submitted by the Civil Service Commission, under their rules, who are hereby empowered to hold examinations for all the above positions."

"Mr. William A. Stone, of Pennsylvania, made the point of order that the amendment changed existing law.

"After debate, the Chairman ruled:

"This bill when reported to the House contained, in the paragraph relating to the Library of Congress, that which is manifestly on its face new legislation. This would have been subject to a point of order under the provisions of Rule XXI, section 2. No such point of order was made, and

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the bill therefore was sent by the House to the Committee of the Whole for consideration just as it was reported and in its entirety. Under these circumstances, as has been heretofore several times ruled, no point of order could be made in the committee against the paragraph on the ground that it contained new legislation. The committee, in other words, could not refuse to consider what the House had sent to it for consideration. But the right of consideration involves also the right of amendment—that is to say, the committee has the right to perfect as it may see fit the matter submitted to it. For these reasons the point of order is overruled.’

“The CHAIRMAN. Now, the proposition pending before the House is in the same position as if it were offered as an independent amendment that was subject to the point of order, but the point of order not being made, it is open to a germane amendment. The Chair for that reason overrules the point of order.

And where a Senate amendment proposes legislation the same principle holds true (IV, 3836–3838, 3862).

Although the rule forbids on any general appropriation bill a provision “changing existing law,” which is construed to mean legislation generally, the House’s practice has established the principle that certain “limitations” may be admitted. It being established that the House under its rules may decline to appropriate for a purpose authorized by law, so it may by limitation prohibit the use of the money for part of the purpose while appropriating for the remainder of it (IV, 3936). The language of the limitation provides that no part of the appropriation under consideration shall be used for a certain designated purpose (IV, 3917–3926). And this designated purpose may reach the question of qualifications, for while it is not in order to legislate as to the qualifications of the recipients of an appropriation the House may specify that no part of the appropriation shall go to recipients lacking certain qualifications (IV, 3942–3952). The limitation may also withhold the money from a part of a designated purpose while appropriating for the remainder of it (V, 3936). The limitation must apply solely to the money of the appropriation under consideration and may not be made applicable to money appropriated in other acts (IV, 3927, 3928). The limitation may not be applied directly to the official functions of executive officers (IV, 3957–3966), but it may restrict executive discretion so far as this may be done by a simple negative on the use of the appropriation (IV, 3968–3972), which does not give affirmative directions (IV, 3854–3859, 3975). The fact that a provision would constitute legislation for only a year does not make it a limitation in order under the rule (IV, 3936). Nor may a proposition to construe a law be admitted (IV, 3936–3938). Care should also be taken that the language of limitation be not such as, when fairly construed, would change existing law (IV, 3976–3983) or justify an executive officer in assuming an intent to change existing law (IV, 3984).

§ 825. Limitations on appropriation bills.

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"HOLMAN RULE," RETRENCHING EXPENDITURE.

Amendment in order providing new legislation. Decisions thereunder.

Question being on the passage of the District of Columbia appropriation bill, a motion to recommit with instructions to reduce the proportion of the fund appropriated from the Public Treasury from one-half, as provided in the bill, to one-fourth of the entire appropriation is in order, since the effect of the amendment if adopted would reduce the expenditure of public money although not reducing the amount of the appropriation. (Journal, 1, 52, pp. 86-87.)

An amendment to the pension appropriation bill tending to increase the class of persons prohibited from the benefits of the pension laws is in order, because its effect would be to reduce expenditures. (Cong. Record, 1, 52, p. 1792.)

An amendment to the pension appropriation bill providing that no fee shall be paid to a member of an examining board for services in which he did not actually participate is not subject to a point of order under this rule, since, while changing existing law, its effect is to reduce expenditures by decreasing compensation. (Cong. Record, 1, 52, p. 1792.)

The following provision in the Army appropriation bill, namely, "That hereafter no money appropriated for Army transportation shall be used in payment for the transportation of troops and supplies of the Army" over certain lines of railroad which are indebted to the Government, was held subject to the point of order under this rule. (Cong. Record, 1, 52, p. 2282.)

The decision in full is as follows:

"The point of order made by the gentleman from Texas [Mr. Crain] is against the second proviso on page 16 of the bill, which declares:

"That hereafter no money appropriated for Army transportation shall be used in payment of the transportation of troops and supplies of the Army over any of the nonbonded lines owned, controlled, or operated by the Union Pacific Railway Company (including the lines of the Oregon Short Line and Utah Northern Railway Company), or by the Southern Pacific Company over lines embraced in its Pacific system."

"Under the view taken by the Chair the relations between the Government and these railroad companies, as determined by the Supreme Court, or otherwise, can not affect the decision of this point of order.

"The gentleman from Indiana [Mr. Holman] contends that this proposed new legislation is in order in an appropriation bill under the proviso of the second section of Rule XXI, which says:

"It shall be in order further to amend such bill upon the report of the committee having jurisdiction of the subject matter of such amendment, which amendment being germane to the subject matter of the bill shall retrench expenditures."

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"The Chair is of opinion that a motion of that kind should come officially from the committee having jurisdiction, and can not be brought before the Committee of the Whole House on the state of the Union as an integral part of an appropriation bill reported by the regular Committee on Appropriations.

"The question then arises, is this proviso in order under the previous paragraph of section 2, which allows legislation on appropriation bills changing existing law in three cases, first, such as, being germane to the subject matter of the bill, retrench expenditures by the reduction of the number and salary of the officers of the United States.

"It is admitted that this provision does not apply, nor, on the other hand, does this proviso 'reduce the compensation of persons paid out of the Treasury of the United States,' as contemplated in the second case, but the point is made with considerable force—and upon that point the Chair confesses that his mind is not as clear as he would like it to be—that this is legislation coming under the third exception, in that it reduces the amount of money covered by the bill.

"If it is such a provision, it is in order, and it is asserted by the chairman of the committee that that would be the effect of the provision. But the Chair is inclined to the opinion that such effect should not be inferred by way of argument, but should appear from the face of the bill itself. Now the Chair has no doubt that the committee, acting under the rules, in making an appropriation, can so limit that appropriation as to direct who shall and who shall not be its beneficiaries; that in making appropriations for the transportation of the Army for the next fiscal year it can fail or refuse to make appropriations for its transportation over the particular lines mentioned in the bill; just as it might fail or refuse, in its judgment, to make appropriations for the transportation of the Artillery, or of the Cavalry, or of the Infantry branch of the service.

"But on examining the proviso in the bill the Chair finds that it is something more than a limitation upon the appropriation made in this appropriation bill, for it proposes to make a permanent law, the language of the proviso being:

"*Provided*, That hereafter no money appropriated for Army transportation shall be used in payment of transportation of troops and supplies.'

"And because it proposes a permanent provision of law, and not a limitation upon a present appropriation, the Chair feels constrained to sustain the point of order." (Cong. Record, 1, 52, p. 2282.)

A provision in the sundry civil appropriation bill "that all articles imported for the use of the Lighthouse Establishment shall be admitted without the payment of duty" is subject to the point of order that it changes

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law and is not within the exceptions mentioned in the rule. (Cong. Record, 1, 52, p. 4232. Hinds' Prec., vol. 4, 3890.)

An amendment to an appropriation bill fixing a minimum compensation to an officer of the Government is subject to the point of order that it changes existing law without reducing expenditures. (Record, 1, 52, p. 4337.)

An amendment proposed to an item for the recoinage of uncurrent fractional silver, which amendment struck out the amount appropriated and added a provision for the coinage of all the bullion in the Treasury into standard silver dollars, the cost of such coinage and recoinage to be paid out of the Government's seigniorage, was held not to be in order under the rule; first, because not germane to the subject matter of the bill (the sundry civil); second, because it did not appear that any retrenchment of expenditure would result, the seigniorage being the property of the Government as other funds in the Treasury. (Record, 1, 52, p. 4439.) On appeal, this decision was sustained by a vote of 120 to 75.

To an item of appropriation for inland transportation of mails by star routes an amendment was offered requiring the Postmaster General to provide routes and make contracts in certain cases, with the further provision, "and the amount of appropriation herein for star routes is hereby reduced to \$500." A point of order made against the first or legislative part of the amendment was sustained, which decision was, on appeal, affirmed by the committee. (Record, 1, 52, pp. 4959-4961.)

To a clause appropriating for transportation of foreign mails an amendment providing that no further contract shall be entered into by the Postmaster General under the act known as the "subsidy act" was held not in order because not directly retrenching expenditure in the manner prescribed in the rule. (Record, 1, 52, p. 5005.)

To an item of appropriation for transportation of foreign mails, an amendment providing that "no money hereby appropriated," etc., shall be expended in carrying out contracts hereafter made under the act known as the "subsidy act," was held to be in order under the rule. (Record, 1, 52, pp. 5003, 5004.)

To a clause appropriating for the foreign mail service, an amendment reducing the appropriation, and in addition repealing the act known as the "subsidy act," was held not in order because the repealing of this act was not germane to the appropriation bill; and that to be in order both branches of the amendment must be germane to the bill. (Record, 1, 52, pp. 5005, 5038.)

A provision in the agricultural appropriation bill transferring the supervision of the importation of animals from the Treasury to the Department

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of Agriculture is out of order, being a provision changing law and not retrenching expenditure. (Record, 1, 52, p. 5167. Hinds' Prec., 4—3886.)

An amendment reducing the amount appropriated for railroad transportation of mails, coupled with a proviso directing the Postmaster General to reduce 10 per cent the annual compensation for transportation of mails on railroads, was held to be in order as within the exceptions to the rule. (Record, 1, 52, 4971—4974. Hinds' Prec., 4—3891.)

An amendment to an appropriation bill, providing that in the purchase of materials for public purposes preference should be given to domestic products, was held out of order as being a change of law and not a mere limitation of the expenditure of the fund appropriated. (Cong. Record, 2, 52, p. 1020.)

An amendment was proposed reducing by one the number of clerks in a bureau provided for in the bill, coupled with a distinct provision repealing part of an act, the effect of which repeal would dispense with the one clerk in such bureau. Held that so much of the amendment as provided for the repeal was subject to the point of order, its effect not being directly to reduce expenditures. (Cong. Record, 2, 52, p. 1392.)

The reduction of expenditure must appear as a necessary result, in order to bring an amendment or provision within the exception to the rule. It is not sufficient that such reduction would probably, or would in the opinion of the Chair, result therefrom. (Cong. Record, 2, 52, p. 1691; *ibid.*, p. 1765.)

In an amendment providing that a certain class of persons, now on the pension rolls, shall hereafter not receive pensions, the retrenchment of expenditure is apparent, and the amendment is in order. (*Ibid.*, p. 1708.)

To an item appropriating "for free delivery service, \$10,450,000," an amendment was submitted striking out that sum and inserting "\$10,449,000, to be disbursed in such manner," etc. (the manner prescribed being a new provision of law). It was held that the amendment was germane; that while it changed existing law, it reduced the amount appropriated by the bill, and was therefore in order. (Record, 1, 52, pp. 4909, 4911.) Upon appeal, this decision was, after full debate, sustained by the Committee of the Whole. (Record, 1, 52, p. 4920.)

To a bill making appropriations for the Indian Service, an amendment transferring the management of Indian affairs from the Department of the Interior to the War Department, but providing no reduction of expenditures, was held to be germane as an amendment, but subject to the point of order, as being a change of law, and no retrenchment appearing as the result of the proposed change. (Speaker Kerr, Cong. Record, 1, 44, p. 2822. Hinds' Prec., 4, 3885.)

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To the pension appropriation bill, a proposed amendment transferring the Pension Bureau from the Department of the Interior to the War Department; also providing that the offices of Commissioner and Deputy Commissioner of Pensions be abolished, and that the duties of those offices be performed by Army officers, to be designated for that purpose, without additional pay, was held to be in order, being germane and retrenching expenditures in the manner provided in the rule. (Cong. Record, 2, 52, p. 1690-1691, W. L. Wilson, chairman. Hinds' Prec., 4, 3887.)

On post-office appropriation bill amendment striking out \$9,500,000 for transportation of mails on railroad routes, and substituting "For transportation on railroad routes \$9,490,000, of which sum \$150,000 may be used by the Postmaster General to maintain and secure from railroads necessary and special facilities for the postal service for the fiscal year ending June 30, 1888," held in order under rule, as it reduced appropriation. (Mr. Carlisle, chairman. Hinds', vol. 4, 3892.)

Amendments providing new legislation must be germane to some provision of the bill and show on face reduction of expenditures. Ruling by Chairman Hughes, New Jersey, December 16, 1911, as follows:

The Chair is ready to rule. The part of the rule upon which the gentleman from Texas relies reads as follows:

"Nor shall any provision in any such bill or amendment thereto changing existing law be in order except such as being germane to the subject matter of the bill shall retrench expenditures by the reduction of the number and salary of the officers of the United States, by the reduction of the compensation of any person paid out of the Treasury of the United States, or by the reduction of the amounts of money covered by the bill."

The Chair assumes that the gentleman relies upon the second classification. In the opinion of the Chair, however, amendments such as proposed by the gentleman from Texas [Mr. Garner] must not only show on their face to be an attempt to reduce expenditures or to retrench, but must also be germane to some provision in the bill. In the opinion of the Chair, this amendment, offered as it is, as a separate paragraph to the urgent deficiency bill, is not germane. Therefore, the Chair sustains the point of order.

Under Holman rule, amendment changing existing law, under proviso of clause 2, rule 21, must be authorized by House committee having jurisdiction of subject matter of legislation. (Chairman Garrett, Jan. 16, 1912, 2d sess., 62d Cong., p. 986. For ruling in full see sec. 944 of Digest.)

Amendment in order, legislating upon an appropriation bill, if germane and reduces the amount appropriated by the bill. Chairman Johnson, of Kentucky, June 21, 1912, 62d Cong., 2d sess., p. 8420, ruled on amendment to strike out of sundry civil bill appropriation for enlarging the Capitol grounds, the amendment repealing the act authorizing the purchase. (For ruling in full see sec. 946 of Digest.)

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Under Holman rule, amendment reducing the number of Cavalry regiments from 15 to 10, is in order, for while the Chair can not fix the amount of the reduction, that a reduction will follow seems to be a fair and necessary conclusion. (Chairman Sanders, 62d Cong., 2d sess., p. 1903.)

(For complete ruling see sec. 945 of Digest.)

3. No amendment shall be in order to any bill affecting revenue which is not germane to the subject matter in the bill; nor shall any amendment to any item of such bill be in order which does not directly relate to the item to which the amendment is proposed.

§ 826. Revenue bill, amendments germane.

Adopted 1st session 62d Congress.

Reciprocity bill, amendment admitting other enumerated goods from Canada free of duty held germane. (Chairman Shirley, Apr. 21, 1911.)

FREE LIST BILL.

Proviso limiting admission from country imposing no tax on goods from United States, held not germane under clause 3 of Rule 21. (Chairman Alexander, 1st sess., 62d Cong., 1110, May 8, 1911.) For ruling in full see sec. 947 of Digest.)

Admitting other articles free. Held not germane to subject matter in the bill. (Chairman Alexander, 1st sess., 62d Cong., 1015, May 8, 1911.)

4. No bill for the payment or adjudication of any private claim against the Government shall be referred, except by unanimous consent, to any other than the following-named committees, viz: To the Committee on Invalid Pensions, to the Committee on Pensions, to the Committee on Claims, to the Committee on War Claims, to the Committee on the Public Lands, and to the Committee on Accounts.

§ 826A. Restriction on the reference of claims.

This rule was adopted in 1885 to prevent the overburdening of committees charged with the examination of public questions (IV, 4380).

It does not apply to public bills, like a bill to establish a commission to settle claims against the Government (IV, 4381).

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§§ 827-829.

RULE XXII.

OF PETITIONS, MEMORIALS, BILLS, AND RESOLUTIONS.

1. Members having petitions or memorials or bills of a private nature to present may deliver them to the Clerk, indorsing their names and the reference or disposition to be made thereof; and said petitions and memorials and bills of a private nature, except such as, in the judgment of the Speaker, are of an obscene or insulting character, shall be entered on the Journal, with the names of the Members presenting them, and the Clerk shall furnish a transcript of such entry to the official reporters of debates for publication in the Record.

At the first organization of the House in 1789 the rules then adopted provided for the presentation of petitions to the House by the Speaker and Members, and for the introduction of bills by motion for leave. In 1842 it was found necessary, in order to save time, to provide that petitions and memorials should be filed with the Clerk. In 1870, 1879, and 1887 the practice as to petitions was extended to private bills, at first as to certain classes and later so that all should be filed with the Clerk (IV, 3312, 3365).

Petitions, memorials, and other papers addressed to the House may be presented by the Speaker as well as by a Member (IV, 3312). Petitions from the country at large are presented by the Speaker in the manner prescribed by the rule (III, 2030; IV, 3318). A Member may present a petition from people of a State other than his own (IV, 3315, 3316). The House itself may refer one portion of a petition to one committee and another portion to another committee (IV, 3353, 3360), but ordinarily the reference of a petition does not come before the House itself. A committee may receive a petition only through the House (IV, 4557).

While the parliamentary law provides that the House may commit a portion of a bill, or a part to one committee and part to another (V, 5558), yet under the practice of the House a bill or joint resolution may not be divided for reference, although it may contain matters properly within the jurisdiction of several committees (IV, 4372, 4376).

§ 827. Introduction of petitions, memorials, and private bills.

§ 828. Duties of Speaker and Members in presenting petitions.

§ 829. As to division of bills for reference.

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§§ 830-832.

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§ 830. Fraudulent introduction of a bill.

The fraudulent introduction of a bill involves a question of privilege, and a bill so introduced was ordered stricken from the files (IV, 3388).

2. Any petition or memorial or private bill excluded

§ 831. Correction of errors in reference; and relation to jurisdiction.

under this rule shall be returned to the Member from whom it was received; and petitions and private bills which have been inappropriately referred may,

by the direction of the committee having possession of the same, be properly referred in the manner originally presented; and an erroneous reference of a petition or private bill under this clause shall not confer jurisdiction upon the committee to consider or report the same.

This rule was first adopted in 1880, although the portion relating to the return of certain petitions and bills was adapted from an older rule of 1842 (IV, 3312, 3365).

Errors in reference of petitions, memorials, or private bills are corrected at the Clerk's table, without action by the House, at the suggestion of the committee holding possession (IV, 4379). As provided in the rule, the erroneous reference of a private House bill does not confer jurisdiction, and a point of order is good when the bill comes up for consideration either in the House or in Committee of the Whole (IV, 4382-4389). But in cases wherein the House itself refers a private House or Senate bill a point of order may not be raised as to jurisdiction (IV, 4390, 4391).

3. All other bills, memorials, and resolutions may,

§ 832. Introduction, reference, and change of reference of public bills, memorials, and resolutions.

in like manner, be delivered, indorsed with the names of Members introducing them, to the Speaker, to be by him referred, and the titles and references

thereof and of all bills, resolutions, and documents referred under the rules shall be entered on the Journal

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Rule XXII.

§§ 833, 834.

and printed in the Record of the next day, and correction in case of error of reference may be made by the House, without debate, in accordance with Rule XI, on any day immediately after the reading of the Journal, by unanimous consent, or on motion of a committee claiming jurisdiction, or on the report of the committee to which the bill has been erroneously referred.

The rule of 1789 provided that all bills should be introduced on report of a committee or by motion for leave. By various modifications it was first provided that all classes of private bills should be introduced by filing them with the Clerk, and in 1890 this system was by this rule extended to all public bills (IV, 3365).

According to the later practice the erroneous reference of a public bill, if it remain uncorrected, in effect gives jurisdiction to the committee receiving it (IV, 4365-4371). Two or more Members can not jointly introduce a bill or resolution under this Rule. Special Committee, 60th Cong., 2d sess., reported against practice, and report adopted by House.

4. When a bill, resolution, or memorial is introduced "by request," these words shall be entered upon the Journal and printed in the Record.

§ 833. Introduction of bills, resolutions, or memorials by request.

This rule was adopted in 1888 (IV, 3366).

5. All resolutions of inquiry addressed to the heads of Executive Departments shall be reported to the House within one week after presentation.

§ 834. Resolutions of inquiry.

The House has exercised the right, from its earliest days, to call on the President and heads of departments for information. The first rule on the subject was adopted in 1820 for the purpose of securing greater care and deliberation in the making of requests. The present form of rule, in its essential features, dates from 1879 (III, 1856).

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Resolutions of inquiry are usually simple rather than concurrent in form (III, 1875), and are never joint resolutions (III, 1860).
 § 835. Forms of resolutions of inquiry and delivery thereof. A resolution authorizing a committee to request information has been treated as a resolution of inquiry (III, 1860). It has been considered proper to use the word "request" in asking for information from the President and "direct" in addressing the heads of departments (III, 1856, footnote, 1895). It is usual for the House in calling on the President for information, especially with relation to foreign affairs, to use the qualifying clause "if not incompatible with the public interest" (II, 1547; III, 1896-1901; V, 5759). But in some instances the House has made its inquiries of the President without condition, and has even made the inquiry imperative (III, 1896-1901). Resolutions of inquiry are delivered under direction of the Clerk (III, 1879) and are answered by subordinate officers of the Government either directly or through the President (III, 1908-1910).

The practice of the House gives to resolutions of inquiry a privileged status. Thus, they are privileged for report and consideration at any time after their reference to a committee (III, 1870), but not before (III, 1857).
 § 836. Privileged status of resolutions of inquiry. And only resolutions addressed to the President and the heads of the executive departments have the privilege (III, 1861-1864). To enjoy the privilege a resolution should call for facts rather than opinions, should not require investigations (III, 1872-1874), and should not present a preamble (III, 1877, 1878). Questions of privilege (as distinguished from privileged questions) have sometimes arisen in cases wherein the head of a department has declined to respond to an inquiry and the House has desired to demand a further answer (III, 1891); but a demand for a more complete reply (III, 1892) or a proposition to investigate as to whether or not there has been a failure or refusal to respond may not be presented as involving the privileges of the House (III, 1893).

Committees are required to report resolutions of inquiry back to the House within one week of the reference, and this week's time is construed to be seven days, exclusive of either the first or last day (III, 1858, 1859). If a committee refuses or neglects to report the resolution back, the House may reach the resolution only by a motion to discharge the committee (III, 1865). The ordinary motion to discharge a committee is not privileged; but the practice of the House has given privilege to the motion in cases of resolutions of inquiry (III, 1866-1870). And this motion to discharge is privileged at the end of the week, even though the resolution may have been delayed in reaching the committee (III,

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1871). Discharge calendar. The motion to discharge is not debatable (III, 1868).

The President having failed to respond to a resolution of inquiry, the House respectfully reminded him of the fact (III, 1890).
§ 838. Resolutions of inquiry as related to the Executive. In 1796 the House declared that its constitutional requests of the Executive for information need not be accompanied by a statement of purposes (II, 1509).

As to the kind of information which may be required, especially as to the papers that may be demanded, there has been much discussion (III, 1700, 1738, 1888, 1902, 1903). There have been several conflicts with the Executive (II, 1534, 1561; III, 1884, 1885-1889, 1894) over demands for papers and information, especially when the resolutions have called for papers relating to foreign affairs (II, 1509-1513, 1518, 1519).

RULE XXIII.

OF COMMITTEES OF THE WHOLE HOUSE.

1. In all cases, in forming a Committee of the Whole House, the Speaker shall leave his chair after appointing a Chairman to preside, who shall, in case of disturbance or disorderly conduct in the galleries or lobby, have power to cause the same to be cleared.

§ 839. Selection of Chairman of Committee of the Whole; and his power to preserve order.

This rule, adopted in 1880, was made from two older rules dating from 1789 and modified in 1794 to provide for the appointment of the Chairman instead of the inconvenient method of election by the committee (IV, 4704).

The Sergeant-at-Arms attends the sittings of the Committee of the Whole and, under direction of the Chairman, maintains order (I, 257). In rare cases wherein the Chairman has been defied or insulted he has directed the committee to rise, left the chair and, on the chair being taken by the Speaker, has reported the facts to the House (II, 1350, 1651, 1653). While the Committee of the Whole does not control the Congressional Record, the Chairman may direct the exclusion of disorderly words spoken by a Member after he has been called to order (V, 6987), but may not determine the privileges of a Member under general "leave to print" (V, 6988). The Chairman decides questions of order arising in the committee independ-

§ 840. Functions of the Chairman of the Committee of the Whole.

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ently of the Speaker (V, 6927, 6928), but has declined to consider a question arising in the House just before the committee began to sit (IV, 4725, 4726). He recognizes for debate (V, 5003); but like the Speaker is forbidden to recognize for requests to suspend the rule of admission to the floor (V, 7285). He may direct the committee to rise when the hour previously fixed for adjournment of the House arrives, in which case he reports in the regular way (IV, 4785); but if the committee happens to be in session at the hour fixed for the meeting of the House on a new legislative day, it rests with the committee and not with the Chairman to determine whether or not the committee shall rise (V, 6736, 6737).

2. Whenever a Committee of the Whole House or of the Whole House on the state of the Union finds itself without a quorum, which shall consist of one hundred Members, the Chairman shall cause the roll to be called, and thereupon the committee shall rise, and the Chairman shall report the names of the absentees to the House, which shall be entered on the Journal; but if on such call a quorum shall appear, the committee shall thereupon resume its sitting without further order of the House.

§ 841. Failure of a quorum in Committee of the Whole.

It was the early practice for the Committee of the Whole to rise on finding itself without a quorum (IV, 2977), and it was not until 1847 that a rule was adopted. In 1880 the rule was put in its present form, except for the provision making the quorum one hundred instead of the quorum of the House itself, which was adopted in 1890 (IV, 2966).

On the failure of the quorum the roll is called but once (IV, 2967). Ordinarily when the roll has been called and the committee has risen, it resumes its session by direction of the Speaker on the appearance of a quorum (IV, 2968). The quorum which must appear to enable the Speaker to direct the committee to resume its sitting is a quorum of the committee and not of the House (IV, 2970, 2971). After the committee has risen and reported its roll call a motion to adjourn is in order before direction as to resumption of the session (IV, 2969); and the failure of a quorum of the House to answer on this roll call does not interfere with the authority of the Speaker to direct the committee to resume its session (IV, 2969).

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The presence of a quorum is not necessary for a motion that the Committee of the Whole rise (IV, 2975, 2976, 4914); but when the committee rises without a quorum, it may not report the bills it has acted on (IV, 2972, 2973), and such bills as have been laid aside to be reported remain in the committee until the next occasion, when the committee rises without question as to a quorum (IV, 4913). The fact that the vote whereby the committee rises does not show a quorum (IV, 4914) or that a point of no quorum has been made without an ascertainment thereof (IV, 2974), does not prevent a report of the bills already acted on. The passage of a bill by the House is not invalidated by the fact that the Committee of the Whole reported it on an erroneous supposition that a record vote had disclosed a quorum (IV, 2972).

3. All motions or propositions involving a tax or charge upon the people; all proceedings touching appropriations of money, or bills making appropriations of money or property, or requiring such appropriation to be made, or authorizing payments out of appropriations already made, or releasing any liability to the United States for money or property, or referring any claim to the Court of Claims, shall be first considered in a Committee of the Whole, and a point of order under this rule shall be good at any time before the consideration of a bill has commenced.

The first form of this rule was adopted in 1794, and it has been perfected by amendments in 1874 and 1896 (IV, 4792).

To require consideration in Committee of the Whole, a bill must show on its face that it falls within the requirements of the rule (IV, 4811-4817), but where the expenditure is a mere matter of speculation (IV, 4818-4821), or where the bill might involve a charge, but does not necessarily do so (IV, 4809, 4810), the rule does not apply. Resolution reported by Committee on Accounts appropriating from contingent fund of the House considered in the House. (Speaker Clark, Apr. 25, 1911, 1st, 62d Cong., 521.) Appropriations from contingent by other committees than Accounts considered in Committee of the Whole on the state of the Union. (Speaker Clark, Aug. 15, 1911, 62, 1st, p. 4128.) A bill

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providing for an expenditure which is to be borne otherwise than by the Government (IV, 4831), or relating to money in the Treasury in trust (IV, 4835, 4836, 4853), is not governed by the rule. But where a bill sets in motion a train of circumstances destined ultimately to involve certain expenditures, it must be considered in Committee of the Whole (IV, 4827). To require consideration in Committee of the Whole, the bill must show on its face that it falls within the rule; but where the expenditure is a mere matter of speculation the rule does not apply. (Speaker Clark, Dec. 14, 1911, 62d Cong., 2d sess., p. 376.) The requirements of the rule apply to amendments as well as to bills (IV, 4793, 4794), and also to any portion of a bill requiring an appropriation, even though it be merely incidental to the bill's main purpose (IV, 4825). Under the later practice general (as well as private and special) bills providing for the adjudication and payment of claims are held to be within the requirements of the rule (IV, 4856-4859).

The House may consider in Committee of the Whole subjects not specified in the rule (IV, 4822), but this was more frequent in the earlier practice than has been in the later (III, 1984, 2415). While conference reports were formerly considered in Committee of the Whole, they may not be sent there on the suggestion of the point of order that they contain matter ordinarily requiring consideration therein (V, 6559-6561). When a bill is made a special order (IV, 3217-3224), or when unanimous consent is given for its consideration (IV, 4823), the effect is to discharge the Committee of the Whole and bring the bill before the House itself for its consideration (IV, 3216). When a bill once considered in Committee of the Whole is recommitted, it is not, when again reported, necessarily subject to the point of order that it must be considered in Committee of the Whole (IV, 4828, 4829; V, 5545, 5546, 5591). Authorizations of expenditures from the contingent fund, under the later rulings (IV, 4862-4867), and reports from the Committee on Printing relating to printing for the use of the two Houses, do not fall within the specifications of the rule (IV, 4868).

Provisions placing liability jointly on the United States and the District of Columbia (IV, 4833), granting an easement on public lands or in streets belonging to the United States (IV, 4840-4842), dedicating public land to be forever used as a public park (IV, 4837, 4838), confirming grants of public lands (IV, 4843) and creating new offices (IV, 4824, 4846), have been held to require consideration in Committee of the Whole. Indian lands have not been considered "property" of the Government within the meaning of the rule (IV, 4844, 4845). And while a bill removing the rate of postage has been held to be within the rule as "involving a tax or charge" (IV, 4861), taxes on bank circulation have not been so considered (IV, 4854, 4855).

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4. In Committees of the Whole House business on their calendars may be taken up in regular order, or in such order as the committee may determine, unless the bill to be considered was determined by the House at the time of going into committee, but bills for raising revenue, general appropriation bills, and bills for the improvement of rivers and harbors shall have precedence.

This rule applies to the two committees of the whole which have been established by the practice of the House (IV, 4705), the Committee of the Whole House on the state of the Union, which considers public bills, and the Committee of the Whole House, which considers private business (IV, 3115). The early practice left the order of taking up bills to be determined entirely by the committee, but in 1844 the House began by rule to regulate the order, and in 1880 adopted the present rule (IV, 4729). The latter portion of the rule is rarely used, since the ordinary practice is to consider general appropriation bills under section 9 of Rule XVI, which gives privilege to motions to go into committee to consider a designated bill of this class (IV, 3072).

The power of the committee to determine the order of considering bills on its calendar is construed to authorize a motion to establish an order (IV, 4730) or a motion to take up a specified bill out of its order (IV, 4731, 4732). Except in cases wherein the rules make specific provisions therefor a motion is not in order in the House to fix the order in which business on the calendars of the Committee of the Whole shall be taken up (IV, 4733). The Committee of the Whole having voted to consider a particular bill, and consideration having begun, a motion to reconsider or change that vote is not in order (IV, 4765). When there is unfinished business in Committee of the Whole, it is usually first in order (IV, 4735).

5. When general debate is closed by order of the House, any Member shall be allowed five minutes to explain any amendment he may offer, after which the Member who shall first obtain the floor shall be allowed to speak five minutes in opposition to it, and

§ 848. General debate and amendment under the five-minute rule in Committee of the Whole.

there shall be no further debate thereon, but the same privilege of debate shall be allowed in favor of and against any amendment that may be offered to an amendment; and neither an amendment nor an amendment to an amendment shall be withdrawn by the mover thereof unless by the unanimous consent of the committee.

A rule of 1789 provided that bills should be read and debated in Committee of the Whole and in the House by clauses. Although that rule has disappeared, the practice continues in Committee of the Whole, although not in the House. Originally there was unlimited debate in Committee of the Whole both as to the bill generally and also as to any amendment; but in 1841 the rule that no Member should speak more than an hour was applied both to the Committee of the Whole and the House. At the same time another rule was adopted to prevent indefinite prolongation of debate in Committee of the Whole by permitting the House by majority vote to order the discharge of the Committee of the Whole from the consideration of a bill after pending amendments and any other amendments should be voted on without debate. The effect of this was to empower the House to close general debate at any time after it had actually begun in the committee; and thereby to require amendments to be voted on without debate. In 1847 a rule provided that any Member proposing an amendment should have five minutes in which to explain it, and in 1850 an amendment to the rule permitted also five minutes in opposition and guarded against abuse by forbidding the withdrawal of an amendment when once offered (V, 5221).

The motion to close general debate in Committee of the Whole, successor
 § 849. Motion to close general debate in Committee of the Whole in the practice to the motion to discharge provided by the rule of 1841, is made in the House pending the motion that the House resolve itself into committee, and not after the House has voted to go into committee (V, 5208); and though not debatable, the previous question is sometimes ordered on it to prevent amendment (V, 5203). Previous question ordered on motion to close debate; 40 minutes debate rule does not apply, but no debate can be had. (Speaker Clark, Jan. 27, 1912, 62d Cong., 2d sess., p. 1407). General debate must have already begun in Committee of the Whole before the motion to limit it is in order in the House (V, 5204-5206). The motion may not apply to a series of bills (V,

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5209), but may apply to the whole or a particular portion of a message of the President (V, 5218); and it must apply to the whole and not to a part of a bill (V, 5207). A proposition for a division of time may not be made as a part of it (V, 5210, 5211). The motion may not be made in Committee of the Whole (V, 5217); but in absence of an order by the House the Committee of the Whole may by unanimous consent determine as to general debate (V, 5232). Where the House has fixed the time the committee may not, even by unanimous consent, extend it (V, 5212-5216). The general debate must close before amendments may be offered (IV, 4744; V, 5221); and it is closed by the fact that no Member desires to participate further (IV, 4745). Motions for disposition of the bill are not in order before general debate is closed (IV, 4778).

The reading of the bill for amendment is not specifically required by the present form of the rule; but is done under a practice which was originally instituted by the rule of 1789 and has continued, although that rule was eliminated, undoubtedly by inadvertence, in the codification of 1880 (V, 5221). Revenue and general appropriation bills are read by paragraphs; other bills by sections (IV, 4739, 4740). A Senate amendment, however, is read in entirety, and not by either paragraphs or sections (V, 6194). When a paragraph or section has been passed it is not in order to return thereto (IV, 4742, 4743) except by unanimous consent (IV, 4746, 4747) or when, the reading of the bill being concluded and a motion to rise being decided in the negative, the committee on motion votes to return (IV, 4748). But the chairman may direct a return to a section whereon, by error, no action was had on a pending amendment (IV, 4750). Points of order against a paragraph should be made before the next paragraph is read (V, 6931). The paragraph or section having been read, and an amendment offered, the right to explain or oppose that amendment has precedence of a motion to amend it (IV, 4751). In this debate recognitions are governed by the conditions of the pending question rather than by the general relations of majority and minority (V, 5223). The Member recognized may not yield time (V, 5035-5037) and must confine himself to the subject (V, 5240-5256).

The pro forma amendment to "strike out the last word" has long been used for purposes of debate or explanation where an actual amendment is not contemplated (V, 5778); but a Member who has occupied five minutes on a pro forma amendment may not lengthen this time by making another pro forma amendment (V, 5222).

§ 850. Reading and amendment under the five-minute rule.

§ 851. Pro forma amendments under the five-minute rule.

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6. The committee may, by the vote of a majority of the members present, at any time after the five minutes' debate has begun upon proposed amendments to any section or paragraph of a bill, close all debate upon such section or paragraph or, at its election, upon the pending amendments only (which motion shall be decided without debate); but this shall not preclude further amendment, to be decided without debate.

This rule was adopted in 1860, with amendment in 1880 and 1885 (V, 5221, 5224).

The motion to close debate is not in order until such debate has begun (V, 5225), which means after one speech of five minutes (V, 5226). The House, as well as the Committee of the Whole, may close the five-minute debate after it has begun (V, 5229, 5231), but rarely exercises this right. The motion to close debate, while not debatable, may be amended (V, 5227). The closing of debate on the last section of a bill does not preclude debate on a substitute for the whole text (V, 5228). The motion may be ruled out when dilatory (V, 5734).

7. A motion to strike out the enacting words of a bill shall have precedence of a motion to amend, and, if carried, shall be considered equivalent to its rejection. Whenever a bill is reported from a Committee of the Whole with an adverse recommendation and such recommendation is disagreed to by the House, the bill shall stand recommitted to the said committee without further action by the House, but before the question of concurrence is submitted it is in order to entertain a motion to refer the bill to any committee, with or without instructions, and when the same is

§ 853. The motion to strike out the enacting words of a bill.

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again reported to the House it shall be referred to the Committee of the Whole without debate.

The practice of rejecting a bill by striking out the enacting words dates from a time as early as 1812, but the first rule on the subject was not adopted until 1822. By amendments in 1860, 1870, and 1880 the rule has been brought into its present form (V, 5326). The rule before 1880 applied in the House as well as in Committee of the Whole. In the revision of 1880 for the first time it was classified among the rules relating to the Committee of the Whole, but there is nothing to indicate that this change was intended to limit the scope of the motion. It was probably a recognition merely of the fact that the motion was used most frequently in Committee of the Whole (V, 5326, 5332).

The motion may not be made until the first section of the bill has been read (V, 5327). Having precedence of a motion to amend, it may be offered while an amendment is pending (V, 5328-5331). After the reading of a bill has been concluded the motion to strike out the enacting words is not in order (IV, 4782). And where a special order

§ 854. Practice as to use of the motion to strike out the enacting clause.

provided that a bill should be open to amendment in Committee of the Whole, a motion to strike out the enacting words was held out of order (IV, 3215). The motion is debatable as to the merits of the bill, but may not go beyond its provisions (V, 5336). The debate on the motion is, in Committee of the Whole, governed by the five-minute rule (V, 5333-5335). A point of order against the motion should be made before debate has begun (V, 6902). When a bill is reported from the Committee of the Whole with the recommendation that the enacting words be stricken out, the motion to strike out is debatable (V, 5337-5340), but a motion to lay on the table is not in order (V, 5337). The previous question may be moved on the motion to concur without applying to further action on the bill (V, 5342). When the House disagrees to the action of the committee in striking out the enacting words and does not refer it under the provisions of the rule, it goes back to the Committee of the Whole, where it becomes unfinished business (V, 5326, 5345, 5346). When the words of a bill are stricken out the bill is rejected (V, 5326), and the Senate is so informed (IV, 3423).

8. The rules of proceeding in the House shall be observed in Committees of the Whole House so far as they may be applicable.

§ 855. Application of rules of the House to the Committee of the Whole.

This rule was adopted in 1789 (IV, 4737).

RULE XXIV.

ORDER OF BUSINESS.

1. The daily order of business shall be as follows:

§ 856. The rule for the order of business in the House.

First. Prayer by the Chaplain.

Second. Reading and approval of the

Journal.

Third. Correction of reference of public bills.

Fourth. Disposal of business on the Speaker's table.

Fifth. Unfinished business.

Sixth. The morning hour for the consideration of bills called up by committees.

Seventh. Motions to go into Committee of the Whole House on the state of the Union.

Eighth. Orders of the day.

Originally the House had no rule prescribing an order of business, but certain simple usages were gradually established by practice before the first rule on the subject was adopted in 1811. The rule was amended frequently in an endeavor so to arrange the business as to give the House as large a freedom as possible in selecting for consideration and completing the consideration of the bills which it deems of the most importance. The present form was finally perfected in 1890 (IV, 3056).

This rule does not, however, bind the House to a daily routine, since the system of making certain important subjects privileged (see Rules XI, § 56; XVI, § 9; XXVIII) permits the interruption of the order of business by matters which, in fact, often supplant it entirely for days at a time.

But on any day, when the order of business is interrupted by a privileged matter, the business in order goes on from the place of interruption (IV, 3070, 3071) unless the House adjourn. After an adjournment the House begins again at the beginning. While privileged matters may interrupt the order of business, they may do so only with the consent

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of a majority of the House, expressed as to appropriation bills by the vote on going into Committee of the Whole to consider such bills, and as to matters like conference reports, questions of privilege, etc., by raising and voting on the question of consideration. The only exception to the principle that a majority may prevent interruption is contained in Rule XXIV, paragraph 7, providing for a call of committees on Wednesdays. By this combination of an order of business with privileged interruptions the House is enabled to give precedence to its most important business without at the same time losing the power by majority vote to go to any other bills on its calendars.

The privileged matters which may interrupt the order of business are, in their order of frequency, as follows:

§ 858. The privileged matters which may interrupt the order of business.	(1) General appropriation and revenue bills (Rule XVI, § 9; IV, 3072).
	(2) Conference reports (Rule XXVIII, § 1; V, 6443).
	(3) Special orders reported by the Committee on

Rules for consideration by the House (Rule XI, § 56; IV, 3070-3076, 4621).

(4) Consideration of amendments between the Houses after disagreement (IV, 3149, 3150).

(5) Questions of privilege (Rule IX; III, 2521).

(6) Privileged bills reported under the right to report at any time (Rule X, § 56; IV, 3142-3144, 4621).

(7) Call of committees on Wednesdays for bills on House and Union calendars (Rule XXIV, par. 7).

(8) Private business on Fridays (Rule XXIV, § 6; IV, 3266, 3267).

(9) District of Columbia business on the second and fourth Mondays of the month (Rule XXIV, par. 8; IV, 3304).

(10) Motions on the first and third Mondays of the month to take up bills by unanimous consent (Rule XIII, § 3), to consider motions to discharge committees from consideration of public bills and joints resolutions (Rule XXVII, § 4), and to suspend the rules and pass bills out of order (Rule XXVII, § 1; V, 6790).

(11) Bills coming over from a previous day with the previous question ordered (V, 5510-5517).

(12) Bills returned with the objections of the President (IV, 3534-3536).

In addition to these matters, the House by practice permits its order of business to be interrupted, at the discretion of the Speaker, for the reception of messages (V, 6602). Requests of Members for leaves of absence are in practice put before the House at the time of adjournment (IV, 3151).

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§ 859. The interruption of the order of business by the request for unanimous consent.

When the House has no rule establishing an order of business, as at the beginning of a session before the adoption of rules, it is in order for any Member who is recognized by the Chair to offer a proposition without asking consent of the House (IV, 3060). But after the adoption of the rule for the order of business, interruptions are confined to matters privileged to interrupt or to cases wherein the House gives unanimous consent for an interruption. A

request for unanimous consent to consider a bill is in effect a request to suspend the order of business temporarily (IV, 3059). Therefore any Member, and the Speaker is, of course, included, may object, or demand the "regular order" (IV, 3058). The Speaker, however, usually signifies his objection by declining to put the request of the Member, thus saving the time of the House. The request for unanimous consent began to be used about 1832 when the House first felt a pressure of business and the necessity of adhering to a fixed order (IV, 3155-3159). By Rule XIII, section 3, a unanimous consent calendar has been established, limiting the functions of the Speaker.

§ 860. Disposal of business on the Speaker's table.

2. Business on the Speaker's table shall be disposed of as follows:

Messages from the President shall be referred to the appropriate committees without debate. Reports and communications from heads of departments, and other communications addressed to the House, and bills, resolutions, and messages from the Senate may be referred to the appropriate committees in the same manner and with the same right of correction as public bills presented by Members; but House bills with Senate amendments which do not require consideration in a Committee of the Whole may be at once disposed of as the House may determine, as may also Senate bills substantially the same as House bills already favorably reported by a committee of the House, and not required to be considered in Committee of the Whole, be disposed of in the same

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manner on motion directed to be made by such committee.

A rule to govern disposition of business on the Speaker's table (to be distinguished from the table of the House, which is the Clerk's table) was adopted in 1832. In 1880 and 1885 efforts were made to so modify the rule as to prevent delays in business on the Speaker's table, but it was not until 1890 that the present rule was adopted (IV, 3089).

Such portions of messages from the Senate as require action by the House, all messages from the President except those transmitting his objections to bills (IV, 3534-3536), and all communications and reports from the heads of departments go to the Speaker's table when received, to be disposed of under this rule. All of the President's messages and such portions of Senate messages as, being House bills with Senate amendments, do not require consideration in Committee of the Whole are laid before the House for action; but communications other than messages from the President, all portions of Senate messages requiring consideration in Committee of the Whole (IV, 3101), and Senate bills of all kinds (with the exception noted in the rule) are referred to the appropriate standing committees under direction of the Speaker without action by the House (IV, 3107, 3111). A House bill returned with Senate amendments involving a new matter of appropriation, whether with or without a request for a conference, is referred directly to a standing committee, and on being reported therefrom is referred directly to the Committee of the Whole (IV, 3094, 3095, 3108-3110). A Senate bill to come before the House directly from the table must conform to the conditions prescribed by the rule (IV, 3098, 3099), and must have come to the House after and not before the House bill "substantially the same" has been placed on the House Calendar (IV, 3096). House bill must be correctly on House Calendar. In determining whether House bill is substantially same as Senate bill, amendments recommended by House committee must be considered. (Speaker Clark, Aug. 9, 1912, 2d sess. 62d Cong., p. 10605.) The rule applies to private as well as to public Senate bills (IV, 3101), and to concurrent resolutions as well as to bills (IV, 3097). Although a committee must authorize the calling up of the Senate bill, the actual motion need not be made by one of the committee (IV, 3100). Authority of committee to call up bill must be given at formal meeting of committee. Ruled by Speaker Clark August 20, 1912, Sixty-second Congress, second session, page 11398, as follows:

"The case is this: The gentleman from Alabama [Mr. Heflin] asks to take from the Speaker's table Senate bill No. 7343 and to have it considered.

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"The gentleman from Illinois [Mr. Foster] raised the point of order that it can not be considered, because its consideration has not been authorized by the committee having jurisdiction thereof.

"The gentleman from Alabama presents the following paper, which he argues is a sufficient authorization under the rule:

"WASHINGTON, D. C., *August 19, 1912.*

"We, the undersigned members of the Committee on Interstate and Foreign Commerce, do hereby authorize the Hon. J. T. Heflin to call up or move to take from the Speaker's desk for immediate consideration Senate bill 7343.

"W. C. Adamson; Wm. Richardson (telegram to chairman); J. Harry Covington; Michael E. Driscoll; T. W. Sims; J. H. Goeke; W. R. Smith; John A. Martin; E. L. Hamilton; Frank E. Doremus; W. A. Cullop.

"There are 21 members of the Interstate and Foreign Commerce Committee. Eleven of them—a majority, therefore a sufficient number to constitute a quorum—signed this paper, as individual members but not as a committee, as it is not claimed that these 11 ever met as a committee to give the necessary authorization. That is the case as presented.

"If the Chair exercised his own personal feelings about this matter, he would rule in favor of the gentleman from Alabama [Mr. Heflin], but the Chair's personal feelings have nothing to do with it. The business of the Speaker is to rule in such a way as to preserve the integrity of the proceedings of the House. The last part of subdivision of rule 24 runs as follows:

"'But House bills with Senate amendments which do not require consideration in a Committee of the Whole may be at once disposed of as the House may determine, as may also Senate bills substantially the same as House bills also favorably reported by a committee of the House, and not required to be considered in Committee of the Whole, be disposed of in the same manner on motion directed to be made by such committee.'

"What is a committee? It has been held, and the present occupant of the Chair has now held two or three times, backed by ample authorities, that the House consists of a quorum of the Members elected and qualified, excepting those who have died or resigned or who have been expelled from the House. What is a committee? A committee consists of a quorum of the membership of that committee, in this case 11 Members, meeting together as a committee. Mr. Speaker Cannon ruled on a question not exactly parallel to this, but very near it.

"Jefferson's Manual in section 26 provides:

"'A committee meet when and where they please, if the House has not ordered time and place for them (6 Grey, 370); but they can only act when together, and not by separate consultation and consent—nothing being the report of the committee but what has been agreed to in committee actually assembled.'

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"That means a quorum of the committee. The Chair has read from section 4583 of Hinds' Precedents, volume 4. Section 4548, which in the syllabus, says:

" 'Committees can only agree to a report acting together.'

"Then Mr. Hinds goes on to say:

" '4584. Committees can only agree to a report acting together.—On January 9, 1905, Mr. John S. Williams, of Mississippi, asked unanimous consent for the present consideration of House resolution No. 415, relating to the statistics of the ginning of cotton, and the following paper was presented, Mr. Williams speaking of it as 'a unanimous report from the Committee on the Census:

" 'COMMITTEE ON THE CENSUS, *January 9, 1905.*

" 'We, the undersigned members of the Committee on the Census, agree to a favorable report on House resolution No. 415, and further agree that its author, Mr. Williams, of Mississippi, may call up same when the opportunity presents itself.

" 'E. D. CRUMPACKER,

" 'Chairman.

" 'JAMES KENNEDY.

" 'F. M. GRIFFITH.

" 'G. B. PATTERSON.

" 'A. S. BURLERSON.

" 'JOE T. ROBINSON.

" 'JAMES HAY.

" 'Mr. Speaker Cannon said:

" 'The Chair understands that, in point of fact, the formal report has not been made from the Committee on the Census, although there is a paper on the Clerk's desk signed by a majority of the members of that committee.'

"To make a ruling that would cover one bill and let this one in would not do very much harm, but to rule that this kind of a paper may take the place of a report or authorization from a committee at an authorized meeting—because the Speaker does not rule in one case only, for the rule is made for all similar cases—would open the doors so wide to a proceeding not authorized by the House that the Chair must hold, in order to preserve the integrity of the proceedings of the House, that the point of order made by the gentleman from Illinois [Mr. Foster] against this paper, which the gentleman from Alabama [Mr. Heflin] presents, is well taken. A proper authorization to call up a Senate bill under the rule cited can be given only by a committee, as herein defined. To decide the other way would be practically to do away with committee meetings."

A message of the President on the Speaker's table is regularly laid before the House only at the time prescribed by the order of business (V, 6635-6638). While it is always read in full and entered on the Journal and the Congressional Record (V, 6963), the accompanying documents are not read on demand of a Member or entered in the Journal or Record (V, 5267-5271). The annual message of the President is usually referred to the Committee of

§ 862. Reference
of President's
messages from the
Speaker's table.

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the Whole House on the state of the Union by the House on motion (V, 6631), whence it is distributed to appropriate standing committees (V, 6621, 6622) by resolutions reported from the Committee on Ways and Means (V, 6621, 6622). But a portion of the annual message has been referred directly to a select committee (V, 6628). A message other than an annual message is usually referred directly to a standing committee by direction of the Speaker (IV, 4053), but may be referred by the House itself on motion by a Member (V, 6631). This reference may be to a select as well as to a standing committee (V, 6633, 6634).

3. The consideration of the unfinished business in which the House may be engaged at an adjournment, except business in the morning hour, shall be resumed as soon as the business on the Speaker's table is finished, and at the same time each day thereafter until disposed of, and the consideration of all other unfinished business shall be resumed whenever the class of business to which it belongs shall be in order under the rules.

The first rule relating to unfinished business was adopted in 1794. Changes were made in 1860 and 1880, but the rule finally became unsatisfactory, because of delays caused by it, and in 1890 the present form was adopted (IV, 3112).

The "business in which the House may be engaged at an adjournment" means, literally, business in the House, as distinguished from the Committee of the Whole; and it further means business in which the House is engaged in its general legislative time, as distinguished from the special periods set aside for classes of business, like the morning hour for calls of committees, Fridays for private bills, etc. In general, all business unfinished in the general legislative time goes over as unfinished business under the rule, but there are a few exceptions. Thus, a motion relating to the order of business does not recur as unfinished business on a succeeding day, even though the yeas and nays may have been ordered on it (IV, 3114). The question of consideration also, when not disposed of at an adjournment, does not recur as unfinished business on a succeeding day (V, 4947, 4948). When the House adjourns before voting on a proposition on which the previous question has been ordered, either directly or by the terms of a special

§ 864. Construction of rule as to unfinished business.

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order (IV, 3185), the question comes up the next day immediately after the reading of the Journal, regardless of the requirements of the rule for the order of business (V, 5510-5517). If several bills come over in this situation, they have precedence in the order in which the several motions for the previous question were made (V, 5518).

The rule excepts by its terms certain classes of business which are considered in periods set apart for classes of business, viz:

§ 865. Business unfinished in periods set apart for classes of business.

- (a) Bills considered in the morning hour for the call of committees.
- (b) Bills in Committee of the Whole.
- (c) Private bills considered on Fridays.

(d) District of Columbia bills.

(e) Bills brought up under the rule setting apart days for motions to suspend the rules.

A bill brought up in the morning hour and undisposed of when the call ceases for the day remains as unfinished business in the morning hour (IV, 3113, 3120), i. e., it is considered when the House next goes to a call of committees. Business unfinished when the Committee of the Whole rises remains unfinished, to be considered first in order when the House next goes into Committee of the Whole to consider that business (IV, 4735, 4736). Private bills unfinished on a Friday go over to the next Friday, and must be considered before the motion to go into Committee of the Whole House to consider other private bills (IV, 3276-3280). But when public business is considered on a Friday the unfinished business goes over until the next legislative day (V, 6945). On District of Columbia day business unfinished on the preceding District day is in order for consideration, but does not come before the House unless called up (IV, 3307). A motion to suspend the rules on which a second has been ordered, and which is undisposed of on one suspension day, goes over as unfinished business to the next suspension day, individual motions going over to a committee day, and vice versa (V, 6814-6816). Where the second has not been ordered, there is doubt as to whether or not the motion goes over as unfinished business (IV, 6817, 6818).

4. After the unfinished business has been disposed of, the Speaker shall call each standing committee in regular order, and then select committees, and each committee when named may call up for consideration any bill

§ 866. The morning hour for the call of committees.

reported by it on a previous day and on the House Calendar, and if the Speaker shall not complete the call of the committees before the House passes to other business, he shall resume the next call where he left off, giving preference to the last bill under consideration: *Provided*, That whenever any committee shall have occupied the morning hour on two days, it shall not be in order to call up any other bill until the other committees have been called in their turn.

The "morning hour" is one of the oldest devices of the rules for devoting an early portion of the session to a specific class of business. Until 1885 it was the hour for the reception of reports from committees. In 1890 it was provided that reports should be filed with the clerk, and the morning hour was by this rule devoted to a call of committees for the consideration of House Calendar bills (IV, 3118).

Originally the morning hour was a fixed period of sixty minutes (IV, 3118); but under the present rules (Rule XXIV, § 4) it does not terminate until the call is exhausted or until the House adjourns (IV, 3119), unless the House on motion made at the end of sixty minutes votes to go into Committee of the Whole House on the state of the Union (Rule XXIV, § 5; IV, 3134), or unless other privileged matter intervenes (IV, 3131, 3132). Before the expiration of the sixty minutes the Speaker has declined to permit the call to be interrupted by a privileged report (IV, 3132) or by unanimous consent (IV, 3130). Where the business for which the call is interrupted is concluded, the call is resumed unless there be other interrupting business or the House adjourns (IV, 3133). A bill once brought up on the call continues before the House in that order of business until disposed of (IV, 3120), unless withdrawn by authority of the committee before action which puts it in possession of the House (IV, 3129); and may not be made a special order for a future day by a motion to postpone to a day certain (IV, 3164). In order to be called up in this order a bill must actually be on the House Calendar, and properly there, in order to be considered (IV, 3122-3126). In case the authority of the committee to call up a bill is disputed the Speaker does not consider it his duty to decide the question (IV, 3127), but has made decision on statements from the chairman and other members of the committee (IV, 3128).

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§§ 868, 869.

5. After one hour shall have been devoted to the consideration of bills called up by committees, it shall be in order, pending consideration or discussion thereof, to entertain a motion to go into Committee of the Whole House on the state of the Union, or, when authorized by a committee, to go into the Committee of the Whole House on the state of the Union to consider a particular bill, to which motion one amendment only, designating another bill, may be made; and if either motion be determined in the negative, it shall not be in order to make either motion again until the disposal of the matter under consideration or discussion.

This rule was adopted in 1890 as part of the plan for enabling the House at will to go at any time to any public bill on its calendars (IV, 3134).

The words of the rule "after one hour" have been interpreted to mean a less time in case the call of committees shall have exhausted itself before the expiration of one hour (IV, 3135); but not otherwise (IV, 3141). After the House has been in Committee of the Whole under this order and has risen and reported, and the report has been acted on by the House, other motions to go into committee to consider other bills are in order (IV, 3136). The motion to go into committee generally may be made by the individual Member (IV, 3138), but when it is proposed to designate a particular bill he must have the authority of a committee (IV, 3138). The amendment to the motion to consider a particular bill must refer to a bill on the Union Calendar (IV, 3139). This order of business is not used in the House for consideration of bills in Committee of the Whole House on the state of the Union like general appropriation and revenue bills, which are very highly privileged (IV, 3072) and bills reported under the leave to report at any time, which have a privilege of somewhat inferior grade (IV, 3086); but is used entirely for nonprivileged bills.

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§§ 870-872.

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6. On Friday of each week, after the disposal of such business on the Speaker's table as requires reference only, it shall be in order to entertain a motion for the House to resolve itself into Committee of the Whole House to consider business on the Private Calendar in the following order: On the second and fourth Fridays of each month preference shall be given to the consideration of private pension claims and bills removing political disabilities and bills removing the charge of desertion. On every Friday except the second and fourth Fridays the House shall give preference to the consideration of bills reported from the Committee on Claims and the Committee on War Claims, alternating between the two committees.

Adopted as a rule in the Sixty-second Congress in lieu special order under which pension and private business were considered.

Under this rule the unfinished private business must be considered before a motion to go into Committee of the Whole House is in order (IV, 3276-3280). This rule does not interfere with the highly privileged motion to go into Committee of the Whole House on the state of the Union to consider revenue or appropriation bills (Rule XVI, § 9), which may be made immediately after the reading of the Journal on Fridays as on other days (IV, 3081), and at any time of the day has precedence of the motion to go into Committee of the Whole House to consider the Private Calendar (IV, 3082-3085). When the House by special order devotes Friday entirely to business other than private business the special rules governing the use of the day are thereby suspended (IV, 3282); and even a special order providing for the consideration of a bill from day to day until disposed of includes Friday unless special exception be made (IV, 3201, 3202).

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§§ 873-875.

The House may "otherwise determine" as to business on Friday by voting in the House itself (as distinguished from the Whole House) on a motion to lay aside private business (IV, 3270-3272), or by voting down the motion to go into Committee of the Whole House (IV, 3267), or by voting affirmatively on the highly privileged motion to go into Committee of the Whole House on the state of the Union to consider revenue or general appropriation bills (IV, 3081). (Cong. Record, 3d sess. 61st Cong., p. 2548.)

7. On Wednesday of each week no business shall
 be in order except as provided by paragraph 4 of this rule unless the House by a two-thirds vote on motion to dispense therewith shall otherwise determine. On such a motion there may be debate not to exceed five minutes for and against. On a call of committees under this rule bills may be called up from either the House or the Union Calendar, excepting bills which are privileged under the rules; but bills called up from the Union Calendar shall be considered in Committee of the Whole House on the state of the Union. This rule shall not apply during the last two weeks of the session. It shall not be in order for the Speaker to entertain a motion for a recess on any Wednesday except during the last two weeks of the session.

§ 874. Wednesday's call of committees.

CALENDAR WEDNESDAY.

No preference bills on House Calendar over bills on Union Calendar. (Dec. 15, 1909, 61st Cong., 2d sess., pp. 161-162.)
 Unfinished business on Union Calendar—Speaker declared House in Committee of the Whole without motion. (Jan. 5, 1910, 61st Cong., 2d sess., p. 237.)

§ 875. Decisions on Calendar Wednesday.

Call of committee rests where call left off on preceding day, and not where left off last Calendar Wednesday. (Jan. 12, 1910, 2d sess., 61st Cong., p. 556; 62d Cong., 1st sess., p. 3956, Speaker Clark.) One com-

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mittee can not occupy more than two Calendar Wednesdays (except for unfinished business) until other committees are called, notwithstanding call rests on said committee. (Speaker Clark, 62d Cong., 2d sess., p. 1342, Jan. 24, 1912.)

Bill undisposed of on Calendar Wednesday unfinished business next Calendar Wednesday. (Speaker Clark, 1st sess., 62d Cong., p. 3956.) Previous question ordered on bill undisposed of when House adjourns Tuesday, goes over as unfinished business until Thursday, and not in order on Calendar Wednesday. (2d sess., 62d Cong., p. 1912, Feb. 20, 1912.)

Notwithstanding two days consumed committee can dispose of bill pending unfinished. (Apr. 20, 1910, 2d sess. 61st Cong., p. 5055; May 11, 1910, 2d sess. 61st Cong., p. 6078.)

It is in order on Calendar Wednesday to move the reconsideration of a bill and pass same over veto of the President, as it is privileged under the Constitution of the United States. Ruling made August 14, 1912, second session, Sixty-second Congress, page 10936, by Speaker Clark, as follows:

"The truth about what the House did in the spring of 1910 as to the question of constitutional privilege raised on the census bill by the gentleman from Indiana [Mr. Crumpacker] was stated correctly by the gentleman from Alabama [Mr. Underwood]. It is not necessary for us to forget everything we know in order to arrive at a conclusion about this matter. The very same men who are arguing this matter here to-day participated very largely in those debates. The transaction which is referred to, on motion of the gentleman from Indiana [Mr. Crumpacker], was just simply part and parcel of a general parliamentary revolution, on which the majority of this House had made up its mind it was going to enter. The present occupant of the chair stated that on the floor of the House in words as plain as the English language could make it—that it was a revolution in which we were engaged and that there was no use to mince words about it. So did the gentleman from Alabama [Mr. Underwood] and others. We never made any pretense that our proceedings were other than revolutionary in a parliamentary sense.

"The gentleman from Alabama [Mr. Underwood] got at the meat in this matter when he said that acting on a President's veto is one of the most important matters that come before the House.

"The Chair is still in doubt whether the Crumpacker resolution is of constitutional privilege or not, but the Chair has no doubt whatever that this proposition now pending to act on this veto message is bottomed on a constitutional mandate. The language of the Constitution is:

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“ ‘If he approve, he shall sign it; but if not, he shall return it with his objections to the House in which it shall have originated, who shall enter the objections at large on the Journal and proceed to reconsider it.’

“ ‘What the gentleman from Kentucky [Mr. Sherley] said is absolutely true, that the very same motions which apply to any other matter before the House apply to this; that is, to postpone, and so forth. And the Chair thinks the Chair has demonstrated by his whole course here that he is as jealous of preserving the sanctity of Calendar Wednesday as any other Member of the House. It has been pretty well observed, and what the gentleman from New York [Mr. Fitzgerald] said, that while it has not accomplished all the good expected and hoped for, it has done a good deal of good.

“ ‘But to say that a question of great constitutional importance like this shall not be passed on on Calendar Wednesday might mean, in certain contingencies, a very serious injury, or at least a grievous inconvenience to the Government of the United States or to the American people. For example, the law of the land is that on the second Wednesday in February the two Houses of the Congress shall meet in joint session to count the electoral vote for President and Vice President, and the framers of that statute were so careful and so wise as to direct that on that day the Congress must be in session—a most extraordinary and drastic provision; and certainly nobody will seriously contend that notwithstanding the rule establishing Calendar Wednesday the Congress could not proceed to discharge one of its most important duties.

“ ‘The Chair does not know whether or not the gentleman from Pennsylvania [Mr. Burke] remembered the case that put the idea in his mind, but he touched on another question of great importance. In the winter of 1876–77 Mr. Speaker Randall, one of the greatest Speakers that ever occupied the Chair, overruled point after point that was justified to be made by the rules of the House, and forced to a conclusion the election of a President of the United States as being a matter of the supremest importance; and the passions of that day having subsided, history has vindicated him for what at the time was denounced as being a high-handed proceeding and a bold usurpation of power.

“ ‘The Chair is of opinion that action on this veto is by a constitutional mandate, and that it has precedence of the business of Calendar Wednesday.

“ ‘Mr. Mann appealed from the decision of the Speaker.

“ ‘Mr. Underwood moved to lay the appeal on the table.

“ ‘The question being on laying the appeal on the table, and being taken, it was decided in the affirmative—yeas 240, nays 10, answering present 7.”

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Privileged bill can not be called up on Calendar Wednesday. (Apr. 13, 1910, 2d sess. 61st Cong., p. 4632.)

Same rule of debate on Calendar Wednesday as other days. (Feb. 2, 1910, 2d sess. 61st Cong., p. 1421.)

On Calendar Wednesday call of committee privileged over motion to go into Committee of the Whole House to consider appropriation bills. (Jan. 16, 1911, 3d sess. 61st Cong., p. 965.)

Call of committee has priority over special order previously adopted providing for the consideration of a bill unless order expressly sets aside Calendar Wednesday. (June 8, 1910, 2d sess. 61st Cong., p. 7603.)

Call of committee more highly privileged than conference report. (Feb. 9, 1910, 2d sess. 61st Cong., p. 1691.)

No bills on calendar for consideration on Calendar Wednesday, House considers other business without motion to dispense with call. (Mar. 24, 1909, 1st sess. 61st Cong., p. 209; Speaker Clark, Apr. 26, 1911, 1st sess. 62d Cong.)

8. The second and fourth Mondays in each month, after the disposal of such business on the Speaker's table as requires reference only, shall, when claimed by the Committee on the District of Columbia, be set apart for the consideration of such business as may be presented by said committee.

The first rule giving a fixed day for District of Columbia business was adopted in 1870. In 1890 the rule was given its present form (IV, 3304).

The Committee on the District of Columbia may not, on a District day, call up a bill reported from another committee (IV, 3311). If certain of the committee's bills are on one of the calendars of the Committees of the Whole a motion to go into committee to consider them is in order (IV, 3310). Business unfinished on one District day does not come up on the next unless called up (IV, 3307). The question of consideration may not be demanded against District business generally but may be demanded against any bill as it is presented (IV, 3308, 3309).

On District days, in order to go into Committee of the Whole on the state of the Union to consider revenue or appropriation bills (Congressional Record, 3d sess. 61st Cong., p. 2548).

RULE XXV.

PRIORITY OF BUSINESS.

§ 877. Decision of questions as to priority of business without debate.

All questions relating to the priority of business shall be decided by a majority without debate.

This rule was adopted in 1803 to prevent obstructive debate (IV, 3061).

It has been held that appeals from decisions of the Chair as to priority of business are not debatable under this rule (V, 6952).

RULE XXVI.

UNFINISHED BUSINESS OF THE SESSION.

All business before committees of the House at the end of one session shall be resumed at the commencement of the next session of the same Congress in the same manner as if no adjournment had taken place.

§ 878. Resumption of business of a preceding session.

At first the Congress attempted to follow the rule of the English Parliament that business unfinished in one session should begin anew at the next; but in 1818, after an investigation of a joint committee in 1816, a rule was adopted that House bills remaining undetermined in the House should be continued at the next session after six days. This rule did not reach House bills sent to the Senate; but in 1848 the two Houses remedied this omission by a joint rule. Business referred to committees of the House was still subject to the old rule of Parliament; but in 1860 the present rule was adopted as a supplement to the rule of 1818. In 1890, desiring to do away with the limitation of the six days and apparently overlooking the main purpose of the rule of 1818, the House resinded that portion of this rule which dated from 1818. Also, in 1876 the joint rules were abrogated, leaving no provision, except the headline of the rule, for the continuance of business not before committees. The practice, however, had become so well established that no question has ever been raised (V, 6727).

The business of conferences between the two Houses is not interrupted by an adjournment of a session which does not terminate the Congress (V, 6260-6262), and even where one House asks a conference at one session the other may agree to it in the next session (V, 6286). Where bills were

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enrolled and signed by the presiding officers of the two Houses at the close of one session they were sent to the President and approved at the beginning of the next session (IV, 3486-3488).

RULE XXVII.

CHANGE OR SUSPENSION OF RULES.

1. No rule shall be suspended except by a vote of two-thirds of the Members voting, a quorum being present; nor shall the Speaker entertain a motion to suspend the rules except on the first and third Mondays of each month, preference being given on the first Monday to individuals and on the third Monday to committees, and during the last six days of a session.

§ 879. Motions
to suspend the
rules.

This rule has been built up gradually on an old rule of 1794, which provided that no rule should be rescinded without one day's notice. In 1822 a clause was added that no rule should be suspended except by a two-thirds vote; and in 1828 it was provided that the "order of business, as established by the rules," should not be changed except by a two-thirds vote. This rule marks the great purpose of the motion, which was to give a means of getting consideration for bills which could not get forward under the rule for the order of business. Originally in order on any day, the motion was, in 1847, restricted to Mondays of each week, and, in 1880, to the first and third Mondays of each month. In 1874 the old limit of ten days at the end of the session was reduced to six days. Originally of great use, when the older and more defective rules for the order of business existed, this motion has ceased to be necessary, since the House in 1890 adopted rules for the order of business which enables the House on any day to go to any public bills on its calendars. Also about the same time the perfection of the process of getting bills before the House out of order by a majority vote through a report from the Committee on Rules still further diminished the importance of the motion to suspend the rules (V, 6790).

While originally the motion was used to suspend the rule for the order of business in order to consider a particular bill (V, § 880. Nature of the motion to suspend the rules. 6852, 6853), in the later practice it is more usual to move "to suspend the rules and pass" the bill (V, 6846, 6847), and a division of the question may not be demanded, either as to the two branches of the motion or as to distinct

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substantive propositions in the subject of the motion (V, 6141-6143). The motion may not be amended (V, 5322, 5405, 6858), postponed (V, 5322), or laid on the table (V, 5405), and the motion to reconsider may not be applied to the vote on the motion (V, 5645, 5646). The motion to refer may not be applied to the bill which it is proposed to pass under suspension of the rules (V, 6860). The motion to suspend the rules applies to the parliamentary law of Jefferson's Manual as well as to the other rules of the House (V, 6796), and may even be used to deny the right to have read a paper on which the House is to vote (V, 5278-5284). But it has usually been held that the right of the Member to have read the paper on which he is called to vote is not changed by the fact that the procedure is by suspension of the rules (V, 5273-5277). The motion is held to suspend all rules inconsistent with its purposes, including a rule requiring a recess to be taken (V, 5752). It may be used also to change a rule (V, 6862), or to make a new rule, as was more frequently done in the earlier years of the House when it was the only way for making a special order except by unanimous consent (3152-3162). In the later practice special orders may still be made on motion to suspend the rules (IV, 3154); but usually they are made by majority vote of the House on a report from the Committee on Rules (IV, 3169). The motion to suspend may include a series of actions, as the discharge of a committee from consideration of a bill and the passage of it (V, 6850), the reconsideration of the vote passing a bill, amendment of it, and passage again (V, 6849), the permission to a committee to report several bills (V, 6857), an order to the Clerk to incorporate in the engrossment of a general appropriation bill a provision not otherwise in order (IV, 3845), an authorization to the House to entertain a specified motion to suspend the rules on a future day, not a suspension day (IV, 3845), a motion to take a bill (V, 6288), or a motion to reconsider, from the table (V, 5640).

In the early practice, when the motion to suspend the rules was used to enable a matter to be taken up for consideration out of order, it was not admitted when a subject was already before the House (V, 5278, 6836, 6837, 6852, 6853). A bill taken up under this early practice might be amended (V, 6842, 6856) by the House, or withdrawn by the mover, in which case another Member might not present it (V, 6854, 6855). In the later practice, where the motion includes both suspension of the rules and action on the subject it is admitted, although another matter be pending (V, 6834), although the yeas and nays may have been demanded on another highly privileged motion (V, 6835), or although the previous question may have been ordered or moved on another matter (V, 6827, 6831-6833). Earlier rulings, however, did not, while a series of Senate

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of the motion to
suspend the rules.

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amendments were pending, permit a motion to suspend the rules in order to permit a vote to be taken on the amendments in gross (V, 6828, 6830). But in the earlier practice, also, while a matter was pending a motion to suspend the rules in order to dispense with the reading otherwise required was admitted (V, 5278). The motion to suspend the rules has been ruled out of order when the House is considering a bill under a special order (V, 6838); and when a question of high privilege is before the House a motion to suspend the rules and consider another matter is not in order (V, 6825, 6826). A motion to suspend the rules and approve the Journal was held in order, although the Journal had not been read and the then highly privileged motion to fix the day to which the House should adjourn was pending (IV, 2758). While the motion is of high privilege, it may be superseded by a question of the privilege of the House (III, 2553). Moreover, in the absence of a motion to suspend, the ordinary motions relating to business of the House may be made on suspension days as on other days (IV, 3080). The motion to suspend the rules may be made on days other than suspension days only by unanimous consent (V, 6795). On "suspension days" the motion to suspend the rules has been admitted at the discretion of the Speaker since 1881 (V, 6791-6794, 6845); but the rules forbid the Speaker to entertain a motion to suspend the rules relating to the privilege of the floor (V, 7283) and the use of the Hall of the House (V, 7270).

The rule gives to individuals preference on the first Monday of the month for making motions to suspend the rules, and preference on the third Mondays for committees to make the motion (V, 6790). In rare instances the Speaker has called the committees in regular order for motions to suspend the rules, but this method is not required (V, 6810, 6811). The committee motion must be formally and specifically authorized by the committee (V, 6805-6807); but after the motion has been seconded and debate has begun it is too late to raise a question as to the authorization (V, 6808). The committee may not present a bill which has not been referred to it (V, 6813) and is not within its jurisdiction (V, 6848). A bill offered on a committee suspension day may carry with it only such amendments as are authorized by a committee (V, 6812). If on a committee day an individual motion is made and seconded, it is then too late to make a point of order (V, 6809).

2. All motions to suspend the rules shall, before being submitted to the House, be seconded by a majority by tellers, if demanded.

§ 883. The second of the motion to suspend the rules.

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§ 884.

This rule was adopted in 1874, but rescinded two years later. In 1880 it was again adopted and has been retained constantly since that time. The object of it was to prevent consumption of the time of the House by forcing consideration of undesirable propositions (V, 6797).

In voting on this second the constitutional right to demand the yeas and nays does not exist (V, 6032-6036). But where a quorum fails on the vote for a second, it has been held that, under Rule XV, § 4, the doors should be closed and the yeas and nays taken (IV, 3053-3055). While it has been held that it is the right of a Member to demand a second but not the duty of the Chair to call for it (V, 6801), it is the custom of the Speaker to ask "Is a second demanded?" (V, 6800). In demanding a second an opponent of the bill is entitled to recognition, and a member of the committee reporting the bill has the preference if he be opposed (V, 6802-6804). It has been held that the right to demand a second is not necessarily precluded by preliminary debate (V, 6800). The motion may be withdrawn (V, 6844) or modified at any time before the second has been ordered (V, 6840); and a committee may, under the same circumstances, withdraw a committee motion, even on a succeeding day (V, 6845).

3. When a motion to suspend the rules has been seconded, it shall be in order, before the final vote is taken thereon, to debate the proposition to be voted upon for 40 minutes, one-half of such time to be given to debate in favor of, and one-half to debate in opposition to, such proposition; and the same right of debate shall be allowed whenever the previous question has been ordered on any proposition on which there has been no debate.

§ 884. The 40 minutes of debate on motions to suspend the rules.

This rule was adopted in 1880 (V, 6821).

Before its adoption the motion to suspend the rules was not debatable (V, 5405, 6820), and it has been held that it may not be debated before a second is ordered (V, 6799). But after a second is ordered the debate is allowed even though the question would not be debatable under the other rules of the House (V, 6822). When previous question ordered without debate on motion not debatable, no debate allowable under this rule. (Speaker Clark, Jan. 27, 1912.) The 40 minutes of debate is divided between the mover and the seconder (V, 6823, 6824). When the mover and seconder divide their time with others, the practice as to alternation of recognitions is not insisted on so rigidly as in other debate (II, 1442).

4. Any Member may present to the clerk a motion in writing to discharge a committee from further consideration of any public bill or joint resolution which may have been referred to such committee fifteen days prior thereto. All such motions shall be entered in the Journal and printed on a calendar to be known as a "Calendar of Motions to Discharge Committees." After the Unanimous Consent Calendar shall have been called on any Monday and motions to suspend the rules have been disposed of, it shall be in order to call up any such motion which shall have been entered at least seven days prior thereto. Recognition for such motions shall be in the order in which they have been entered. When such motion shall be called up, the bill shall be read by title only prior to a second being ordered by tellers, and no such motion shall be entertained as to a bill or joint resolution the title of which contains more than one hundred words; after the reading of the bill by title the motion shall not be submitted to the House unless seconded by a majority by tellers; if such motion fails of a second, it shall be immediately stricken from the calendar and shall not be thereafter placed thereon. If a second be ordered debate on such motion shall be limited to twenty minutes, one-half thereof in favor of the proposition and one-half in opposition thereto. Such motions shall require for adoption an affirmative vote of a majority of the membership of the House. Whenever such a motion shall prevail the bill so taken from the consideration of a commit-

§ 884A. The motion to discharge a committee.

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tee shall thereupon be placed upon its appropriate calendar and upon call of the committee from which any bill has been so taken it may be called up for consideration by any Member prior to any bill reported by said committee at a date subsequent to the discharge of said committee: *Provided*, No Member shall have upon such calendar more than two motions at the same time.

This rule adopted June 17, 1910, and amended first session Sixty-second Congress. (Amended Feb. 3, 1912.)

Motion to discharge a committee from the consideration of a bill under this rule is of a higher privilege than a motion to consider an appropriation bill. (Jan. 16, 1911, 3d sess. 61st Cong., pp. 965-976.)

Motion to discharge committee can be called up by any member. (Speaker Clark, 1st sess. 62d Cong., p. 3815, Aug. 7, 1911.)

Member calling up motion precluded from making point of order against it. (Speaker Clark, 1st sess. 62d Cong., p. 3815, Aug. 7, 1911.)

Committee must be appointed fifteen days prior to motion being placed on Calendar. (Speaker Clark, 1st sess. 62d Cong., p. 3815, Aug. 7, 1911.)

Quorum not being present when House voting by tellers on seconding motion to discharge a committee, the Chair orders a call of the House under clause 4, rule 15, and vote taken on motion to second by yeas and nays. Speaker pro tem Sims, January 15, 1912, ruled as follows:

"Does the gentleman from Alabama [Mr. Underwood] wish to make a further statement?

"Mr. UNDERWOOD. I do not.

"The Chair had an idea that possibly this situation would arise, and consequently has been looking the matter up before the question of a point of no quorum was made, and of course availed itself of the assistance of the aid to the Chair on these parliamentary matters by consulting the Clerk to the Speaker's table, especially as the present occupant is only a temporary occupant.

"From all the Chair was able to gather before and since the point was made, the Chair thinks that this is a vote within the meaning of the automatic rule and that the automatic rule, section 4, applies. The Chair in part cites as authority for this rule the following from page 139, volume 4, of Hinds' Precedents:

" 'On June 16, 1902, Mr. Fred C. Stevens, of Minnesota, by authority of the Committee on Military Affairs, moved to suspend the rules and pass with amendment the bill (H. R. 14441) to authorize the Secretary of War,

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in his discretion, to favor American-built ships in the transportation of Government supplies to the Philippines across the Pacific Ocean.

“ ‘A second having been demanded, there appeared on a vote, by tellers—ayes 77, noes 0.

“ ‘Mr. James D. Richardson, of Tennessee, made the point of order that there was no quorum present.

“ ‘The Speaker, having counted the House, announced the presence of 129 Members, not a quorum.

“ ‘Mr. Oscar W. Underwood, of Alabama, moved that the House adjourn, which was negatived on division—ayes 41, noes 81, a demand for the yeas and nays on the motion to adjourn being refused.

“ ‘Then the Speaker said:

“ ‘There being no quorum present, the Doorkeeper will close the doors and the Sergeant at Arms will bring in absent Members to answer to their names. The question is on seconding the motion to suspend the rules and pass the bill.’

“ ‘The Chair will read from the Manual, Rule XXVII, clause 2:

“ ‘All motions to suspend the rules shall, before being submitted to the House, be seconded by a majority by tellers, if demanded.’

“ ‘That is the same in language as the discharge rules provides, being in fact, clause 4 of the rule on suspension. With all the light before the Chair, it seems to be a new point. The Chair holds the automatic rule applies, and the doors will be closed.’”

RULE XXVIII.

CONFERENCE REPORTS.

1. The presentation of reports of committees of conference shall always be in order, except when the Journal is being read, while the roll is being called, or the House is dividing on any proposition.

§ 885. High privilege of conference reports; and form of accompanying statement.

The practice of giving conference reports privilege dates from 1850, having had its origin in a temporary rule. This practice was continued by rulings of the Chair until this rule was adopted in 1880 (V, 6443-6446, 6454).

Under the language of the rule a conference report may be presented while a Member is occupying the floor in debate (V, 6451), while a bill is being read (V, 6448), after the yeas and nays have been ordered (V, 6457), after the previous question has been demanded or ordered (V, 6449, 6450), and during a call of the House if a quorum be present (V, 6456). It even takes precedence of the motion to reconsider (V, 5605) and to adjourn (V, 6451-6453), although as soon as the report is presented the motion to

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adjourn may be put (V, 6451-6453). Also the consideration of a conference report may be interrupted, even in the midst of the reading of the statement, by the arrival of the hour previously fixed for a recess (V, 6524). While it may not be presented while the House is dividing, it may be presented after a vote by tellers and pending the question of ordering the yeas and nays (V, 6447). It also has precedence of a report from the Committee on Rules (V, 6449), and has been permitted to intervene when a special order provides that the House shall consider a certain bill "until the same is disposed of" (V, 6454). Of course a question of privilege which relates to the integrity of the House as an agency for action may not be required to yield precedence to a matter entitled to priority merely by the rules relating to the order of business (V, 6454).

1. And there shall accompany every such report a detailed statement sufficiently explicit to inform the House what effect such amendments or propositions will have upon the measures to which they relate.

§ 886. The statement accompanying a conference report.

This rule was adopted in 1880 (V, 6821).

The statement required by the rule should be in writing and signed by at least a majority of the House managers (V, 6505, 6506). The Speaker may require the statement to be in proper form (V, 6513), but it is for the House and not the Speaker to determine whether or not it conforms to the rule in other respects (V, 6511, 6512). A report may not be received without the accompanying statement (V, 6504, 6514, 6515). If conferees of House agreeing to conference surrenders papers to House asking conference, report can be received first by House asking the conference. (Speaker Clark, 1st sess. 62d Cong., p. 4028.)

Where amendment strikes out all after enacting clause, conferees have whole subject before them. (Speaker Clark, 1st sess. 62d Cong., p. 4066, Aug. 14, 1911.) Conferees limited to differences between the two Houses and can not insert in report new matter not germane thereto. On the Army appropriation bill on June 13, 1912, Speaker Clark made an elaborate ruling on the question, to be found as section 942 of Digest.

2. It shall not be in order to consider the report of a committee of conference until such report and the accompanying statement shall have been printed in the Record, except on either of the six days preceding the end of a session.

§ 887. Printing of conference reports and statements in the Record.

This rule was adopted in 1902 (V, 6516).

RULE XXIX.

SECRET SESSION.

Whenever confidential communications are received from the President of the United States, or whenever the Speaker or any Member shall inform the House that he has communications which he believes ought to be kept secret for the present, the House shall be cleared of all persons except the Members and officers thereof, and so continue during the reading of such communications, the debates and proceedings thereon, unless otherwise ordered by the House.

§ 888. Secret sessions of the House.

This rule, in a somewhat different form, was adopted in 1792, although secret sessions had been held by the House before that date. They continued to be held at times with considerable frequency until 1830. In 1880, at the time of the general revision of the rules, the House concluded to retain the rule, although it had been long in disuse (V, 7247).

The two Houses have legislated in secret session, transmitting their messages also in secrecy (V, 7250); but the House has declined to be bound to secrecy by act of the Senate (V, 7249). Motions to remove the injunction of secrecy should be made with closed doors (V, 7254). In 1843 a confidential message from the President was referred without reading; but no motion was made for a secret session (V, 7255).

RULE XXX.

READING OF PAPERS.

When the reading of a paper other than one upon which the House is called to give a final vote is demanded, and the same is objected to by any Member, it shall be determined without debate by a vote of the House.

§ 889. Objections to reading of papers.

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§§ 890-892.

This rule was adopted in 1794 and amended in 1802 and 1880 (V, 5257).

It recognizes the right of the Member under the general parliamentary law to have read the paper on which the House is to vote (V, 5258), but when that paper has been read once, the reading may not be repeated unless by order of the House (V, 5260). The right may be abrogated by suspension of the rules (V, 5278-5284); but is not abrogated simply by the fact that the current procedure is taking place under the rule for suspension (V, 5273-5277). On a motion to refer a report the reading of it may be demanded as a matter of right, but the latest ruling leaves to the House to determine whether or not an accompanying record of testimony should be read (V, 5261, 5262). In general the reading of a report is held to be in the nature of debate (V, 5292); but where a report presents facts and conclusions but no legislative proposition it is read if submitted for action (IV, 4663). Where a paper is offered as involving a matter of privilege it should be read to the House (III, 2597) rather than by the Speaker privately (III, 2546), but a Member may not, as a matter of right, require the reading of a book or paper on suggestion that it contains matter infringing on the privileges of the House (V, 5258).

The reading of papers other than the one on which the vote is about to be taken is usually permitted without question (V, 5258), and the Member in debate usually reads or has read such papers as he pleases, but this privilege is subject to the authority of the House if another Member objects (V, 5285-5288, 5289-5291). This principle applies even to the Member's own written speech (V, 5258), or a report which he proposes to have read in his own time or to read in his place (V, 5293). But, on a motion to lay on the table, a demand for the reading of a paper other than the one to which the motion applied was overruled (V, 5297); and after the previous question is ordered a Member may not ask the decision of the House as to the reading of a paper not before the House for action (V, 5296), even though it be the report of the committee (V, 5294-5295).

RULE XXXI.

DRAWING OF SEATS.

1. At the commencement of each Congress, immediately after the Members and Delegates are sworn in, the Clerk shall place in a

§ 892. Selection
of seats by lot.

box, prepared for that purpose, a number of small balls, of marble or other material, equal to the number of Members and Delegates, which balls shall be consecutively numbered and thoroughly intermingled, and at such hour as shall be fixed by the House for that purpose, by the hands of a page, draw said balls one by one from the box and announce the number as it is drawn, upon which announcement the Member or Delegate whose name on a numbered alphabetical list shall correspond with the number on the ball shall advance and choose his seat for the term for which he is elected.

2. Before said drawing shall commence each seat shall be vacated and so remain until selected under this rule, and any seat having been selected shall be deemed forfeited if left unoccupied before the call of the roll is finished; and whenever the seats of Members and Delegates shall have been drawn, no proposition for a second drawing shall be in order during that Congress.

Originally Members selected their seats by mutual agreement; but in 1845 a rule was adopted providing for selection by lot. This method was perfected by amendments in 1872 and 1880 (I, 119).

RULE XXXII.

HALL OF THE HOUSE.

The Hall of the House shall be used only for the legislative business of the House and for the caucus meetings of its Members, except upon occasions where the House by resolution

§ 893. Use of the
Hall of the House.

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§ 894.

agree to take part in any ceremonies to be observed therein; and the Speaker shall not entertain a motion for the suspension of this rule.

Rules relating to the use of the Hall were adopted as early as 1804. The present form of the rule dates from 1880 (V, 7270).

RULE XXXIII.

OF ADMISSION TO THE FLOOR.

1. The persons hereinafter named, and none other, shall be admitted to the Hall of the House or rooms leading thereto, viz:

§ 894. Persons and officials admitted to the floor during sessions of the House.

The President and Vice-President of the United States and their private secre-

taries, judges of the Supreme Court, Members of Congress and Members-elect, contestants in election cases during the pendency of their cases in the House, the Secretary and Sergeant-at-Arms of the Senate, heads of departments, foreign ministers, governors of States, the Superintendent of the Capitol Building and Grounds, the Librarian of Congress and his assistant in charge of the Law Library, the Resident Commissioner to the United States from Porto Rico, such persons as have, by name, received the thanks of Congress, ex-Members of the House of Representatives who are not interested in any claim or directly in any bill pending before Congress, and clerks of committees when business from their committee is under consideration; and it shall not be in order for the

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Speaker to entertain a request for the suspension of this rule or to present from the chair the request of any Member for unanimous consent.

This rule, which has been amended only slightly since 1880, was subjected to many changes from 1802 until that date (V, 7283).

The portion of the rule forbidding the Speaker to entertain requests for suspension of the rule applies also to the Chairman of the Committee of the Whole (V, 7284). "Heads of departments" means members of the President's Cabinet, and not subordinate executive officers, and "foreign ministers" means ministers from foreign governments only. "Governors of States" does not include governors of Territories (V, 7283).

An alleged violation of the rule relating to admission to the floor presents a question of privilege (III, 2624, 2625), but not a higher question of privilege than an election case (III, 2626). In one case where an ex-Member was abusing the privilege, he was excluded by direction of the Speaker (V, 7288), but in another case the Speaker declared it a matter for the House and not the Chair to consider (V, 7286). In one case an alleged abuse was inquired into by a select committee (V, 7287).

§ 895. Abuse of the privilege of the floor.

2. There shall be excluded at all times from the Hall of the House of Representatives and the cloakrooms all persons not entitled to the privilege of the floor during the session, except that until fifteen minutes of the hour of the meeting of the House persons employed in its service, accredited members of the press entitled to admission to the press gallery, and other persons on request of Members, by card or in writing, may be admitted.

§ 896. Admission to the floor when the House is not sitting.

This rule was adopted in 1902 (V, 7346).

RULE XXXIV.

OF ADMISSION TO THE GALLERIES.

The Speaker shall set aside a portion of the west gallery for the use of the President of the United States, the members of his Cabinet, justices of the Supreme Court, foreign ministers and suites, and the members of their respective families, and shall also set aside another portion of the same gallery for the accommodation of persons to be admitted on the card of Members. The southerly half of the east gallery shall be assigned exclusively for the use of the families of Members of Congress, in which the Speaker shall control one bench, and on request of a Member the Speaker shall issue a card of admission to his family, which shall include their visitors, and no other person shall be admitted to this section.

§ 897. The various galleries and admission thereto.

This rule was adopted in 1880 (V, 7302).

On special occasions the House sometimes makes a special rule for admission to the galleries (V, 7303), as on the occasion of the electoral count (III, 1961).

RULE XXXV.

OFFICIAL AND OTHER REPORTERS.

1. The appointment and removal, for cause, of the official reporters of the House, including stenographers of committees, and the manner of the execution of their duties shall be vested in the Speaker.

§ 898. Reporters of debates and committee stenographers.

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§§ 899-901.

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This rule was adopted in 1874 (V, 6958).

The reporters of debates have borne an important part in the evolution by which the House has built up the system of a daily verbatim report of its proceedings, made by its own corps of reporters (V, 6959). Since these reporters have become officers of the House a correction of the Congressional Record has been held a question of privilege (V, 7014-7016).

The arrangement, style, etc., of the Congressional Record is prescribed by the Joint Committee on Printing (V, 7024), who also determine as to the insertion of maps, diagrams, etc. (V, 7024). The Record is for the proceedings of the House and Senate only, and matters not connected therewith are rigidly excluded (V, 6962). It is not, however, the official record, that function being fulfilled by the Journal (IV, 2727). As a general principle the Speaker has no control over the Record (V, 6984, 7017), but words spoken by a Member after he has been called to order may be excluded by direction of the Speaker (V, 6975-6978). But the House, and not the Speaker, determines what liberty shall be allowed to a Member who has leave to extend his remarks (V, 6997-7000), whether or not a copyrighted article shall be printed therein (V, 6985), as to an alleged abuse of the leave to print (V, 7012), or as to a proposed amendment (V, 6983).

As a general rule the Committee of the Whole has no control over the Congressional Record (V, 6986); but the Chairman, in the preservation of order, may direct the exclusion of disorderly words spoken by a Member after he has been called to order (V, 6987). In a case wherein the committee conceived that a letter read in committee involved a breach of privilege, it reported the matter to the House for action, and the House struck the letter from the Record (V, 6986). The Chairman of the Committee of the Whole does not determine the privileges of a Member under a general leave to print in the Record, that being for the House alone (V, 6988). Neither may the Committee of the Whole grant a general leave to print, although for convenience it does permit individual Members to extend their remarks (V, 7009, 7010).

While the House controls the Congressional Record, the Speaker with the assent of the House laid down the principle that words spoken by a Member in order might not be changed by the House, as this would be determining what a Member should utter on the floor (V, 6974). Neither should one House strike out matter placed in the Record by permission of the other House (V, 6966). But the House may correct the speech of one of its Members so that it may record faithfully what he actually said (V, 6972). Where

§ 899. Relations of the Speaker to the Congressional Record.

§ 900. Relations of the Committee of the Whole to the Congressional Record.

§ 901. Correction of the Congressional Record.

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§§ 902, 903.

a Member had uttered disorderly words on the floor without objection, the House yet decided that it was not precluded from action when the words, after being withheld for revision, appeared in the Record, and struck them out (V, 6979, 6981).

The House has also ordered stricken from the Record printed speeches condemned as unparliamentary for reflections on Members, committees of the House, the House itself (V, 7017), and the Senate (V, 5129). It is improper for a Member to have published in the Record the individual votes of Members on a question of which the yeas and nays have not been entered on the Journal (V, 6982). A correction of the Record which involves a motion and a vote is recorded in the Journal (IV, 2877). Propositions to make corrections are sometimes considered by the Committee on Printing (VI, 4349). In debating a resolution to strike from the Record disorderly language a Member may not read the language (V, 7004); but it was held that as part of a personal explanation relating to matter excluded as out of order a Member might read the matter, subject to a point of order if the reading should develop anything in violation of the rules of debate (V, 5079). It has also been held that a Member may not, in a controversy over a proposed correction of the Record as to a matter of business, demand as a matter of right the reading of the reporter's notes (V, 6967).

A motion or resolution for the correction of the Congressional Record may be made properly after the reading and approval of the Journal (V, 7013), and is not in order pending the approval of the Journal (V, 6989), but is privileged after that (V, 7014-7019). A question of privilege as to an alleged error in the Record may not be raised until the Record has appeared (V, 7020), and a resolution to omit from the manuscript copy certain remarks declared out of order is not privileged (V, 7021). Offensive words having been stricken from the Record, a question of privilege may not arise therefrom (V, 7023).

It has been the practice to allow a Member, with the approval of the Speaker, to revise his remarks before publication in the Congressional Record (V, 6971); but he should not change the notes of his own speech in such a way as to affect the remarks of an opponent in controversy without bringing the correction to the attention of that Member (V, 6972). A Member is not entitled to inspect the Reporter's notes of remarks which do not contain reflections on himself, delivered by another Member and withheld for revision (V, 6964). Where a Member so revised his remarks as to affect the import of words uttered by another Member, the House corrected the Record (V, 6973). The Joint Committee

§ 902. Privilege of propositions to correct the Congressional Record.

§ 903. Privilege of Member to revise his remarks in the Congressional Record.

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on Printing prescribes the conditions under which Members may revise their remarks (V, 7024).

The practice of inserting in the Congressional Record speeches not § 904. "Leave to actually delivered on the floor has grown up by consent print" in the of the House as the membership has increased and Congressional it has become difficult at times for every Member to Record. express at length on the floor his reasons for his attitude on public questions (V, 6990-6996, 6998-7000). The House quite generally stipulates, in granting leave to print, that it shall be exercised without unreasonable freedom (V, 7002, 7003). General leave to print may be granted only by the House, although in Committee of the Whole a Member, by unanimous consent, is sometimes given leave to extend his remarks (V, 7009, 7010). When a Member under leave to print places in the Record that which would not have been in order if uttered on the floor, the House may exclude the speech in whole or in part (V, 7005-7008). Thus, where a Member, under leave to print, made charges against another Member, the House ordered the speech stricken out (V, 7004). The principle that a Member shall not be called to order for words spoken in debate if business has intervened does not apply to a case where leave to print has been violated (V, 7005). Where a Member gets leave to insert one matter he may not print another (V, 7001). Where a Member abused a leave to print on the last day of a session, the House at the next session condemned the abuse and declared the matter not a legitimate part of the official debates (V, 7017). An abuse of the leave to print gives rise to a question of privilege (V, 7005-7008, 7011), and a resolution to expunge from the Record in such a case is offered as of privilege (V, 7012). An inquiry by the House as to an alleged abuse of the leave to print does not necessarily entitle the Member implicated to the floor on a question of personal privilege (V, 7012).

2. Such portion of the gallery over the Speaker's

§ 905. Unofficial reporters in the press gallery and on the floor.

chair as may be necessary to accommodate representatives of the press wishing to report the debates and proceedings shall be set aside for their use, and reputable reporters and correspondents shall be admitted thereto under such regulations as the Speaker may from time to time prescribe; and he may assign one seat on the floor to Associated Press reporters, one

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§§ 906, 907.

to the Sun Press Association, one to the United Press Association, one to the National News Association, and one to the New York Herald Syndicate, and regulate the occupation of the same. And the Speaker may admit to the floor, under such regulations as he may prescribe, one additional representative of each press association.

This rule was first adopted in 1857, and has been amended from time to time as the occasion demanded (V, 7304), including February 18, 1909.

RULE XXXVI.

PAY OF WITNESSES.

§ 906. Fees of witnesses before the House or committees. The rule for paying witnesses subpoenaed to appear before the House or either of its committees shall be as follows: For each day a witness shall attend, the sum of two dollars; for each mile he shall travel in coming to or going from the place of examination, the sum of five cents each way; but nothing shall be paid for traveling when the witness has been summoned at the place of trial.

This rule was adopted in 1872, with amendments in 1880 (III, 1825).

RULE XXXVII.

PAPERS.

§ 907. Duties of clerk and committees as to custody of papers before committees. The clerks of the several committees of the House shall, within three days after the final adjournment of a Congress, deliver to the Clerk of the House all bills, joint resolutions, petitions, and other papers referred to the committee, together with all evidence

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taken by such committee under the order of the House during the said Congress and not reported to the House; and in the event of the failure or neglect of any clerk of a committee to comply with this rule the Clerk of the House shall, within three days thereafter, take into his keeping all such papers and testimony.

This rule was adopted in 1880 (V, 7260).

RULE XXXVIII.

WITHDRAWAL OF PAPERS.

§ 908. Custody of papers in the files of the House.

No memorial or other paper presented to the House shall be withdrawn from its files without its leave, and if withdrawn therefrom certified copies thereof shall be left in the office of the Clerk; but when an act may pass for the settlement of a claim, the Clerk is authorized to transmit to the officer in charge with the settlement thereof the papers on file in his office relating to such claim, or may loan temporarily to an officer or bureau of the executive departments any papers on file in his office relating to any matter pending before such officer or bureau, taking proper receipt therefor.

This rule was adopted in 1873 and amended in 1880 (V, 7256).

A statute (31 Stat. L., p. 642) provides that papers in the files of the House which are not required to be retained there, shall be delivered to the Librarian of Congress for custody, although they are to be considered as still in the files of the House.

The House usually allows the withdrawal of papers only in cases where there has been no adverse report. As the rules for the order of business give no place to the motion to withdraw, it is made by unanimous consent (V, 7259).

RULE XXXIX.

BALLOT.

In all cases of ballot a majority of the votes given shall be necessary to an election, and where there shall not be such a majority on the first ballot the ballots shall be repeated until a majority be obtained; and in all balloting blanks shall be rejected and not taken into the count in enumeration of votes or reported by the tellers.

This rule was first adopted in 1789 and was amended in 1837 (V, 6003). The last election by ballot seems to have occurred in 1868 (V, 6003).

RULE XL.

MESSAGES.

Messages received from the Senate and the President of the United States, giving notice of bills passed or approved, shall be entered in the Journal and published in the Record of that day's proceedings.

This rule was adopted in 1867 and amended in 1880 (V, 6593).

House receives message from Senate when Senate not in session. Speaker Clark, 1st sess., 62d Cong., June 13, 1911.

RULE XLI.

EXECUTIVE COMMUNICATIONS.

Estimates of appropriations and all other communications from the executive departments, intended for the consideration of any committees of the House, shall be addressed to the Speaker, and by him referred as provided by clause 2 of Rule XXIV.

RULES OF THE HOUSE OF REPRESENTATIVES.

§§ 912, 913.

Rules XLII, XLIII.

This rule was adopted in 1867 (IV, 3573).

All estimates of appropriations are required by statute to be transmitted through the Secretary of the Treasury (IV, 3573, footnote), and to be prepared and submitted according to the order and arrangement of the appropriation acts of the year preceding (IV, 3576). The Book of Estimates (IV, 4045), which contains most of the estimates, is in fact printed before the assembling of Congress (V, 3574).

RULE XLII.

QUALIFICATIONS OF OFFICERS AND EMPLOYEES.

§ 912. Officers and employees not to be agents of claims. No person shall be an officer of the House, or continue in its employment, who shall be an agent for the prosecution of any claim against the Government, or be interested in such claim otherwise than as an original claimant; and it shall be the duty of the Committee on Accounts to inquire into and report to the House any violation of this rule.

This rule was adopted in 1842 (V, 7227).

RULE XLIII.

JEFFERSON'S MANUAL.

§ 913. Relations of Jefferson's Manual to the rules of the House. The rules of parliamentary practice comprised in Jefferson's Manual shall govern the House in all cases to which they are applicable, and in which they are not inconsistent with the standing rules and orders of the House and joint rules of the Senate and House of Representatives.

PRINTING.

The old rule on the subject of printing was abolished by the Sixty-second Congress, as the printing statute covered the subject.

§ 914.

General printing statute, approved January 12, 1895. The following amendment was adopted January 20, 1905:

That section fifty-four of said act is hereby amended by adding at the end thereof as follows:

That hereafter the usual number of reports on private bills, concurrent or simple resolutions, shall not be printed. In lieu thereof there shall be printed of each Senate report on a private bill, simple or concurrent resolution, three hundred and forty-five copies, which shall be distributed as follows: To the Senate document room, two hundred and twenty copies; to the Secretary of the Senate, fifteen copies; to the House document room, one hundred copies; to the superintendent of documents, ten copies; and of each House report on a private bill, simple or concurrent resolution, two hundred and sixty copies, which shall be distributed as follows: To the Senate document room one hundred and thirty-five copies; to the Secretary of the Senate, fifteen copies; to the House document room, one hundred copies; to the superintendent of documents, ten copies: *Provided*, That nothing contained in this act shall be construed to prevent the binding of all Senate and House reports in the reserve volumes bound for and delivered to the Senate and House libraries: *Provided*, That not less than twelve copies of each report on bills for the payment or adjudication of claims against the Government shall be kept on file in the Senate document room.

SEC. 2. That section fifty-five of said act is hereby amended to read as follows:

"SEC. 55. There shall be printed of each Senate and House public bill and joint resolution six hundred and twenty-five copies, which shall be distributed as follows: To the Senate document room, two hundred and twenty-five copies; office of Secretary of Senate, fifteen copies; House document room, three hundred and eighty-five copies. There shall be printed of each Senate private bill, when introduced, when reported, and when passed, three hundred copies, which shall be distributed as follows: To the Senate document room, one hundred and seventy copies; to the Secretary of the Senate, fifteen copies; to the House document room, one hundred copies; to the superintendent of documents, ten copies. There shall be

RULES OF THE HOUSE OF REPRESENTATIVES.

§ 914.

Rule XLIII.

printed of each House private bill, when introduced, when reported, and when passed, two hundred and sixty copies, which shall be distributed as follows: To the Senate document room, one hundred and thirty-five copies; to the Secretary of the Senate, fifteen copies; to the House document room, one hundred copies; to the superintendent of documents, ten copies. The term 'private bill' shall be construed to mean all bills for the relief of private parties, bills granting pensions, bills removing political disabilities, and bills for the survey of rivers and harbors. All bills and resolutions shall be printed in bill form, and, unless specially ordered by either House, shall only be printed when referred to a committee, when favorably reported back, and after their passage by either House. Of concurrent and simple resolutions, when reported, and after their passage by either House, only two hundred and sixty copies shall be printed, except by special order, and the same shall be distributed as follows: To the Senate document room, one hundred and thirty-five copies; to the Secretary of the Senate, fifteen copies; to the House document room, one hundred copies; to the superintendent of documents, ten copies.'

Approved, January 20, 1905.

The following amendment adopted June 25, 1910:

That that part of section fifty-four of an act approved January twelfth, eighteen hundred and ninety-five, providing for the public printing and binding and the distribution of public documents which reads as follows: "The remainder of said documents and reports shall be reserved by the Public Printer in unstitched form, and shall be held subject to be bound in the number provided by law, upon orders from the Vice President, Senators, Representatives, Delegates, Secretary of the Senate, and Clerk of the House, in such binding as they shall select, except full morocco or calf; and when not called for and delivered within two years after printing shall be delivered in unbound form to the superintendent of documents for distribution," as amended by Public Resolution Numbered Thirty-six, approved June thirtieth, nineteen hundred and two, is hereby repealed, to take effect at the close of the second session of the Sixty-first Congress, and the reserved documents and reports therein provided shall thereafter not be printed: *Provided*, That nothing herein shall operate to abridge in any way the right of the Vice President, Senators, Representatives, Delegates, Resident Commissioners, Secretary of the Senate, and Clerk of the House to have bound in half morocco, or material not more expensive, one copy of every public document to which he may be entitled.

Approved, June 25, 1910.

RULES OF THE HOUSE OF REPRESENTATIVES.

Rule XLIII.

§ 914.

Amendment authorizing Clerk of the House et al. to order reprinting of bills. Approved March 1, 1907. (Hinds' Prec., vol. 5, 7319.)

Amendment to correct abuses in printing, approved March 30, 1906.

Amendment to prevent unnecessary printing and binding, approved March 30, 1906.

Amendment relative to public printing and binding, approved January 15, 1908.

FORMS.

FORMS.

OF PUTTING QUESTIONS.

The forms of putting ordinary questions are:

The Speaker, rising, says:

§ 915. Form of
putting question
for viva voce vote.

As many as are in favor (as the question may be) say
"Aye."

And after the affirmative voice is expressed:

As many as are opposed say "No."

If a division is demanded, the Speaker says:

§ 916. Form of
putting the
question for vote
by division.

As many as are in favor will rise and stand until
counted.

And after the count of the affirmative:

The ayes will be seated and the noes will stand.

If tellers are ordered:

§ 917. Form of
putting the
question for vote
by tellers.

The gentleman from ———, Mr. ———, and the
gentleman from ———, Mr. ———, will take their
places as tellers. As many as are in favor (as the
question may be) will now pass between the tell-
ers and be counted.

After those in the affirmative have been counted
the tellers report the number and the Chair announces
it to the House; after which he announces:

As many as are opposed will now pass between the tellers and be counted.

FORMS.

§§ 918-921.

The number of those in the negative is reported, after which there is an opportunity for additional Members to vote on either side, the tellers reporting the additions. Then the Chair reports the vote.

If the yeas and nays are ordered:

§ 918. Form of putting the question for a vote by yeas and nays.

As many as are in favor (as the question may be) will, as their names are called, answer "Yea;" as many as are opposed will answer "Nay." The Clerk will call the roll.

Form for putting the previous question:

§ 919. Form of putting the question on the previous question.

The gentleman from —— demands the previous question. As many as are in favor of ordering the previous question will say "Aye;" as many as are opposed will say "No."

Form of putting the question on the vote to pass a bill returned with the President's objections:

§ 920. Form of putting the question on passing a vetoed bill.

Will the House on reconsideration agree to pass the bill, the objections of the President to the contrary notwithstanding? As many as are in favor, etc.

OF PETITIONS.

The House has never adopted any form for petitions, and petitioners have used various forms:

§ 921. Various forms of petitions.

To the House of Representatives of the United States:

Your petitioners, citizens of the United States and residents of ——, respectfully represent, etc.

[Here follow signatures.]

FORMS.

§§ 922-924.

To the House of Representatives of the United States of America in Congress assembled:

Your petitioners [description, place of residence, etc.] humbly petition for legislation to provide ———.

For this your petitioners do ever pray.

Very respectfully, your obedient servants,

[Here follow signatures.]

To the House of Representatives of the United States:

We, your petitioners, residents of ———, ———, respectfully request that ———.

[Here follow signatures.]

On the outside of each petition should be indorsed:

Petition of [name of first petitioner] and ——— other residents of ———, ———, praying for ———.

or a similar indorsement, which shall describe the petitioners, state their numbers, and give the substance of their prayer.

OF ORDERS, RESOLUTIONS, AND BILLS.

Form of an order:

§ 922. Form of orders.

Ordered, That the hour of daily meeting of the House shall be 12 m.

Form of a simple resolution of the House:

§ 923. Form of simple resolutions of the House.

Resolved, That the House declines to consider any bill which violates its constitutional prerogative of originating revenue bills.

Form of a concurrent resolution for adjournment of Congress sine die:

§ 924. Forms of concurrent resolutions; and for adjournment sine die and for a recess.

Resolved by the House of Representatives (the Senate concurring), That the President of the Senate and the Speaker of the House of Representatives be authorized to close the present session by adjourning their respective Houses on the ——— day of ———, ———, at ——— o'clock.

FORMS.

§§ 925-927.

Form of concurrent resolution for a recess of Congress:

Resolved by the House of Representatives (the Senate concurring), That when the two Houses adjourn on ———, ———, they stand adjourned until 12 o'clock meridian, ———, ———, ———.

Form of joint resolutions:

JOINT RESOLUTION

§ 925. Form of
joint resolutions.

Authorizing, etc. [as the title may be].

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That all, etc.

The title is also indorsed on the back of the joint resolution with the name of the Member introducing it and the committee to which it is referred.

Form of bills:

A BILL

§ 926. Form of
bills.

For the establishment, etc. [as the title may be].

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, etc.

OF REPORTS FROM COMMITTEES.

Form of report from Committee of the Whole:

§ 927. Form of
reports from
committees of
the whole.

The Committee of the Whole having risen and the Speaker having taken the Chair, the Chairman takes his place in the area in front of the Clerk's desk, and says:

Mr. Speaker, the Committee of the Whole House [or Whole House on the state of the Union, as the case may be] have had under consideration the bill [giving number and title] and have directed me to report the same with amendments, with the recommendation that the amendments be agreed to and that the bill do pass.

If there are no amendments, or if several bills are reported at once, or if the Committee of the Whole recommend that a bill do not pass or be laid on the table, the report is modified accordingly.

If the Committee of the Whole have not concluded consideration, the Chairman reports that "they have come to no resolution thereon."

As soon as the Chairman has reported to the Speaker, the latter repeats the report to the House, beginning:

The gentleman from ———, Chairman of the Committee of the Whole House [or Whole House on the state of the Union] reports that that committee have had under consideration, etc.

Form of report from a standing or select committee:

§ 928. Form of reports from standing or select committees.	The Committee on ——— to whom was referred the bill (H. R. 1010) "to provide," etc., having considered the same, report it to the House [with amendments specified, if there be any] with the recommendation that it do pass [or do not pass, or be laid on the table, etc.].
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Reports often embody arguments or statements of facts in addition to the recommendations of the committee.

The general form of a report of a committee of conference is as follows:

§ 929. Form of reports from managers of conferences.	The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 10) "making appropriations," etc., having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:
--	---

That the Senate recede from its amendment numbered ———.

FORMS.

§ 980.

That the House recede from its disagreement to the amendment of the Senate numbered — and agree to the same.

That the House recede from its disagreement to the amendment of the Senate numbered — and agree to the same with an amendment as follows: — etc., and the Senate agree to the same.

That the House recede from its amendment to the amendment of the Senate numbered —.

_____,
_____,
_____.

Managers on the part of the House.

_____,
_____,
_____.

Managers on the part of the Senate.

[On the duplicate copy which is presented in the Senate the names of the Senate managers are placed first].

The written statement accompanying a conference report need not preserve regularity as to form so long as it embodies a fairly comprehensive statement of the effect of the settlement in conference. In general the form most approved is:

§ 980. Form of
statement
accompanying a
conference report.

report need not preserve regularity as
to form so long as it embodies a fairly
comprehensive statement of the effect

of the settlement in conference. In general the
form most approved is:

The managers on the part of the House at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. —) making, etc., submit the following written statement explaining the effect of the action agreed on: — etc.

_____,
_____,
_____.

Managers on the part of the House.

FORMS.

§§ 931-933.

OF RESOLUTION PROVIDING FOR AN INVESTIGATION.

Resolved, That the Speaker appoint a select committee of ——— members of the House, and that such committee be instructed to inquire into ———, and for such purposes it shall have power to send for persons and papers and administer oaths, and shall have the right to report at any time. The expenses of said inquiry shall be paid out of the contingent fund of the House upon vouchers approved by the chairman of said committee, to be immediately available.

[The portion empowering the committee to administer oaths is probably superfluous, as the statutes empower the Speaker, the Chairman of the Committee of the Whole or of any other committee, and any member of the House to administer oaths to witnesses in any case under examination (III, 1769); and in the later practice it has been settled that the authority to administer oaths should be given by law rather than by rule of either House (III, 1823, 1824, 2081, 2162, 2294, 2303). The provision for payment of expenses out of the contingent fund is more properly made the subject of a separate resolution, which should be considered by the Committee on Accounts, while the portion ordering the investigation is considered by the Committee on Rules. But frequently the Committee on Rules reports on both propositions, although their report in such a case is necessarily subject to a point of order.]

§ 931. Form of resolutions directing investigations.

§ 932. Administration of oaths to witnesses.

OF SPECIAL ORDER FOR CONSIDERATION OF A BILL.

Resolved, That immediately upon the adoption of this resolution the House shall proceed to consider the bill (H. R. —) entitled, etc., and at the end of ——— hours a vote shall be taken on all pending amendments and on the bill to final passage.

§ 933. Form of a special order for consideration of a bill.

[This is merely an illustration of the general form of such orders. They vary greatly according to the nature of the bill to be considered and other considerations. For forms to suit varying conditions, see IV, 3231-3265.]

FORMS.

§ 984.

OF LETTERS OF RESIGNATION.

If a Member resigns directly to the House he may do so by a letter in this form:

WASHINGTON, D. C., ———, ———.

§ 984. Forms of
letters of
resignation.

SIR: I hereby resign my office as Representative in the Congress of the United States from the ——— district of ———.

With great respect, your obedient servant,

—————.

Hon. ——— ———,

Speaker of the House of Representatives.

When a resignation is tendered in this manner, the House orders the Speaker to inform the governor of the State of the resignation.

Members more frequently resign by transmitting a letter of resignation directly to the executive of the State, in which case a letter is sent to the Speaker in form as follows:

WASHINGTON, D. C., ———, ———.

SIR: I beg leave to inform you that I have this day transmitted to the governor of ——— my resignation as a Representative in the Congress of the United States from the ——— district of ———.

—————.

Hon. ——— ———,

Speaker of the House of Representatives.

The letter to the governor may be in form as follows:

His Excellency ——— ———,

Governor of ———.

SIR: I hereby tender to you my resignation as a Member of the House of Representatives in the Congress of the United States from the ——— district of ———.

—————.

OF CEREMONIES FOR DECEASED MEMBERS.

The death of a Member, when it occurs during a session of Congress, is announced to the House by a colleague, who presents resolutions in general form as follows:

§ 935. Resolutions
on death of a
Representative.

1. *Resolved*, That the House has heard with profound sorrow of the death of Hon. ———, a Representative from the State of ———.
2. *Resolved*, That a committee of ——— Members of the House, with such Members of the Senate as may be joined, be appointed to attend the funeral.
3. *Resolved*, That the Sergeant-at-Arms of the House be authorized and directed to take such steps as may be necessary for carrying out the provisions of these resolutions, and that the necessary expenses in connection therewith be paid out of the contingent fund of the House.
4. *Resolved*, That the Clerk communicate these resolutions to the Senate and transmit a copy thereof to the family of the deceased.

These resolutions having been agreed to, and the Speaker having appointed the committee, the Member then offers the following:

5. *Resolved*, That, as a further mark of respect, this House do now adjourn.

The death of a Member during the recess of Congress is usually announced by a colleague at the beginning of the next session, and resolutions in form similar to those numbered one, four, and five are offered.

Sometimes several such announcements are made at once, and a single adjournment is taken for all.

FORMS.

§ 936, 937.

The death of a Senator is announced to the House only by message from the Senate; and after receipt of the message, resolutions in form as follows are adopted:

§ 936. Resolutions on the death of a Senator.

Resolved, That the House has heard with profound sorrow of the death of the Hon. ———, a Senator of the United States from the State of ———.

Resolved, That the Clerk communicate these resolutions to the Senate and transmit a copy thereof to the family of the deceased Senator.

Resolved, That a committee of ——— Members be appointed on the part of the House to join the committee appointed on the part of the Senate to attend the funeral.

Resolved, That as a further mark of respect the House now adjourn.

At an appropriate time after the death of a Member a colleague offers an order:

§ 937. Memorial exercises in honor of a deceased Member.

Ordered, That ———, the ——— day of ———, at ——— o'clock, be set apart for addresses on the life, character, and public services of Hon. ———, late a Representative from the State of ———.

The day thus set apart having arrived, a colleague offers the following:

Resolved, That the business of the House be now suspended, that opportunity may be given for tributes to the memory of Hon. ———, late a Member of this House from the State of ———.

Resolved, That as a particular mark of respect to the memory of the deceased, and in recognition of his distinguished public career, the House, at the conclusion of these exercises, shall stand adjourned.

Resolved, That the Clerk communicate these resolutions to the Senate.

Resolved, That the Clerk send a copy of these resolutions to the family of the deceased.

BILLS.

STAGES OF A BILL OF THE HOUSE.

1. Introduction:

By a Member by laying the bill on the Clerk's table informally. A
 § 938. **Introduction of a bill and its progress to final passage.** Member sometimes introduces a petition only, leaving to the committee the drawing of a bill, such a petition referred to a committee having jurisdiction of the subject giving authority to report a bill. Sometimes communications addressed to the House from the executive departments or from other sources are referred to committees by the Speaker and give authority for the committees to originate bills. Messages from the President also are referred by the Speaker or the House and give jurisdiction to the committees receiving them to originate bills.

2. Reference to a standing or select committee:

Public bills are referred under direction of the Speaker; private bills are indorsed with the names of the committees to which they go under the rule by the Members introducing them. Senate bills are referred under direction of the Speaker. A bill is numbered and printed when referred.

3. Reported from the committee:

Committees having leave to report at any time make their reports from the floor; other committees make their reports by laying them on the Clerk's table informally. The bill and the report are printed when reported.

4. Placed on the Calendar:

Occasionally a privileged bill is considered when reported; but usually it is placed with the unprivileged bills on the Calendar where it belongs under the rule by direction of the Speaker.

5. Consideration in Committee of the Whole:

Public bills which do not raise revenue or make or authorize appropriations of money or property do not go through this stage. All other bills are considered in Committee of the Whole. The stages of consideration in Committee of the Whole are: General debate; reading for amendment under the five-minute rule; order to lay aside with a favorable recommendation, or to rise and report; reporting of to the House.

6. Reading a second time in the House:

Bills not requiring consideration in Committee of the Whole are read a second time in full, after which they are open to debate and amendment in any part. Bills considered in Committee of the Whole are read a second time in full in that committee and when reported out, with or without amendments, are not read in full again, but are subject to further debate or amendment in the House unless the previous question is ordered at once.

7. Engrossment and third reading:

The question on House bills is taken on ordering the engrossment and third reading at one vote. If decided in the affirmative, the reading a third time usually takes place at once, by title. But any Member may demand the reading in full of the engrossed copy, in which case the bill is laid aside until it can be engrossed. Senate bills come to the House in engrossed form, and the question is put on third reading alone. When the question on engrossment and third reading of a House bill or third reading of a Senate bill is decided in the negative, the bill is lost as much as if defeated on the final passage. The question on engrossment and third reading is not made from the floor, but is put by the Speaker as a matter of course.

8. Passage:

The question on the passage of a bill is put by the Speaker as a matter of course, without awaiting a motion from the floor.

9. Transmission to the Senate by message.

10. Consideration by the Senate:

In the Senate House bills are usually referred to committees for consideration and report, after which they have their several readings, with opportunities for debate and amendment. The same procedure takes place in the House as to bills sent from the Senate.

11. Return of, from the Senate without amendments:

If the Senate passes a House bill without amendment it returns it to the House, where it is at once enrolled on parchment for signature. A bill thus passed without amendment goes into possession of the clerk, and is not laid before the House prior to enrollment. If the Senate rejects a House bill the House is informed. Similar procedure occurs when the House passes a Senate bill without amendment.

12. Return of, from the Senate with amendments:

House bills returned with Senate amendments go to the Speaker's table. If any Senate amendment requires consideration in Committee of the Whole the bill is referred by the Speaker informally to the standing committee having jurisdiction, and when that committee reports the bill with recommendations it is referred to Committee of the Whole House on the state of the Union, to be there considered and reported to the House itself. When no Senate amendment requires consideration in Committee of the Whole the bills come before the House directly from the Speaker's table.

13. Consideration of Senate amendments by the House:

When a bill with Senate amendments comes before the House, the House takes up each amendment by itself and may vote to agree to it, agree to it with an amendment, or disagree to it. If it disagrees it may ask a conference with the Senate or may send notice of its disagreement, leaving it to the Senate to recede or insist and ask the conference.

14. Settlement of differences by conference:

When disagreements are referred to conference, the managers embody their settlement in a report, which is acted on by each House as a whole. When this report is agreed to the bill is finally passed, and is at once enrolled for signature.

15. Enrollment on parchment:

The House in which a bill originates enrolls it.

16. Examination by the Committee on Enrolled Bills:

While the Committee on Enrolled Bills is described as a joint committee, each branch acts independently. The chairman of each branch affixes to the bills examined a certificate that the bill has been found truly enrolled.

17. Signing by the Speaker and President of the Senate:

The enrolled bill is first laid before the House of Representatives and signed by the Speaker, whether it be a House or Senate bill, after which it is transmitted to the Senate and signed by the president of that body.

18. Transmittal to the President of the United States:

The Chairman of the Committee on Enrolled Bills for each House carries the bills from his House to the President. In the House of Representatives a report of the bills taken to the President each day is made to the House and entered on its Journal.

19. Approval by the President:

If the President approve he does so with his signature.

20. Disapproval by the President:

When the President disapproves a bill he returns it to the House in which it originated, with a message stating that he disapproves, and giving his reasons therefor.

21. Action on when returned disapproved:

The House to which a disapproved bill is returned has the message read and spread on its Journal. It may then consider at once the question of passing the bill notwithstanding the President's objections, or may postpone to a day certain, or refer to a committee for examination. The vote on passing the bill, notwithstanding the President's objections, must be carried by two-thirds. If the bill fails to pass in the House to which it is returned it remains there; but if it passes it is sent to the other House for action.

22. Filing with the Secretary of State:

When approved by the President a bill is deposited in the office of the Secretary of State; and when the two Houses have passed a bill, notwithstanding the President's objections, the presiding officer of the House which acts on it last transmits it to the Secretary of State.

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MISCELLANEOUS.

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MISCELLANEOUS.

§§ 939, 940.

The franking privilege is established and regulated by law:

§ 939. The franking privilege.

No allowance is made the Member for postage (R. S., sec. 44); but Members and Delegates and the Clerk may send and receive free through the mail all public documents printed by order of Congress, the name of the user and designation of the office being written thereon, this privilege continuing until the 1st day of December following the expiration of the user's term of office (19 Stat. L., p. 336; 20 Stat. L., p. 10). The Congressional Record or any part thereof, or speeches or reports contained therein, may, under the frank of a Member or Delegate, to be written by himself, be carried free under such regulations as the Postmaster General may prescribe (18 Stat. L., p. 343). Seeds transmitted by the Commissioner of Agriculture, or by any Member or Delegate receiving seeds from the department for transmission, are sent free in the mails under frank, and this privilege applies to ex-Members and ex-Delegates for a period of nine months after the expirations of their terms (18 Stat. L., p. 343). The Public Printer furnishes to the Department of Agriculture for the use of Members franks for the transmission of seeds (32 Stat. L., pp. 741, 742). Members, Members-elect, Delegates, and Delegates-elect may send free through the mails, under their franks, any mail matter to any government official or to any person, correspondence not exceeding 2 ounces in weight, upon official or departmental business (28 Stat. L., p. 622; 26 Stat. L., p. 1081; 30 Stat. L., p. 443).

The government telegraph lines may be used by Members and officers of Congress solely on public business (18 Stat. L., p. 20).

The assignment of rooms in the office building of the House of Representatives is regulated by the law of May 28, 1908 (35 Stat. L., p. 578), which provides:

§ 940. Assignment of rooms in the Office Building.

That the assignment of rooms in the office building of the House of Representatives, which shall hereafter be designated as the House Office Building, heretofore made by resolution or order of the House of Representatives, shall continue in force until modified or changed in accordance with the provisions of this resolution, and the room so assigned to any Representative shall continue to be held by such Representative as his individual office room so long as he shall remain a Member or Member-elect of the House of Representatives, or until he shall relinquish the same, subject, however, to the provisions of this resolution, and no Representative shall allow his office room to be used for any other purpose.

MISCELLANEOUS.

§ 940.

Any Member or Member-elect of the House of Representatives may file with the Superintendent of the Capitol Building and Grounds a request in writing that any individual office room be assigned to him whenever it shall become vacant. If only one such request has been made for any room which shall at any time have become vacant, the room shall be assigned as requested. If two or more requests are made for the same vacant room, preference shall be given to the Representative making the request who has been longest in continuous service as a Member and Member-elect of the House of Representatives. If two or more Representatives with equal length of continuous service, or two or more Representatives-elect make request for the same room, preference shall be given to the one first preferring his request. A Representative or Representative-elect making request for the assignment of a vacant room may withdraw the same at any time and no one shall have pending at the same time more than one such request. The assignment of a new room to a Representative, upon his request, or the appointment of any Representative having an individual office room as chairman of a committee having a committee room, shall act as a relinquishment by him of the room previously assigned to him.

Representatives having rooms assigned to them in the foregoing manner may exchange rooms one with another, but such exchange shall be valid only so long as both Members making the exchange shall remain continuously Members or Members-elect of the House of Representatives.

The Superintendent of the Capitol Building and Grounds shall keep a record of the assignment of rooms heretofore or hereafter made, exchanges which may be made, requests for vacant rooms which may be filed, and the assignment thereof, which record shall be open for the inspection of Representatives or Representatives-elect of the House.

In the matter of the assignment of rooms under this resolution, Delegates in Congress and the Commissioners from Porto Rico and the Philippine Islands shall be treated the same as Representatives.

The assignment and reassignment of the rooms and other space in the House Office Building shall be subject to the control of the House of Representatives by rule, resolution, order, or otherwise. Nothing in this resolution shall be construed to affect or repeal the provisions of law heretofore enacted placing said House Office Building under the control of the Superintendent of the Capitol Building and Grounds, subject to the approval and direction of the Commissions provided for respectively in the act of March third, nineteen hundred and three, and the act of March fourth, nineteen hundred and seven.

Unoccupied space in said building shall be assigned by the Superintendent of the Capitol Building and Grounds under the direction of the Commission and subject to the control of the House of Representatives.

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Distribution of Pub. Docs.

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Distribution of documents, reports, bills, laws, etc.

	House document room.	Clerk of the House.	Senate document room.	Secretary of the Senate.	Executive Mansion.	State Department.	Treasury Department.	War Department.	Navy Department.	Interior Department.	Post Office Department.	Agricultural Department.	Department of Justice.	Department of Commerce and Labor.	Smithsonian Institution.	Interstate Commerce Commission.	Civil Service Commission.	Commissioners of the District of Columbia.	Superintendent of documents.	Library of Congress.	Legations.
House documents.....	420	20	150	10	2	20													2	2	40
Senate documents.....	360	10	220	10	2	20													2	2	40
House reports on private bills, concurrent or simple resolutions.....	100		135	10	2	20													10	2	
Senate reports on private bills, concurrent or simple resolutions.....	100		220	10	2	20													10	2	
House reports on public bills and joint resolutions.....	420	15	150	5	2	20													2	2	40
Senate reports on public bills and joint resolutions.....	360	10	220	5	2	20													2	2	40
House and Senate public bills and joint resolutions.....	385		225	10	2	10	5	5	5	5	5	5	5	5	5	5	5	5	2	5	40
House private bills, when introduced, when reported, and when passed.....	100		35	10	2	10	5	5	5	5	5	5	5	5	5	5	5	5	10	5	
Senate private bills, when introduced, when reported, and when passed.....	100		170	15	2	10	5	5	5	5	5	5	5	5	5	5	5	5	10	5	
Concurrent and simple resolutions, when introduced in either House.....	385		225	10	2	10	5	5	5	5	5	5	5	5	5	5	5	5	2	5	40
Concurrent and simple resolutions, when reported and after their passage by either House.....	100		135	10	2	10	5	5	5	5	5	5	5	5	5	5	5	5	10	5	40
Public laws.....	1,000		550			200-500	60												2	2	40
Private laws, postal conventions, and treaties.....	100		100			200-500	60												2	2	

¹ House public bills and joint resolutions.

² Senate public bills and joint resolutions.

[PUBLIC—No. 32.]

[H. R. 2958.]

An act to amend an act entitled “An act providing for publicity of contributions made for the purpose of influencing elections at which Representatives in Congress are elected,” and extending the same to candidates for nomination and election to the offices of Representative and Senator in the Congress of the United States and limiting the amount of campaign expenses.

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publicity act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That sections five, six, and eight of an Act entitled “An Act providing for publicity of contributions made for the purpose of influencing elections at which Representatives in Congress are elected,” approved June twenty-fifth, nineteen hundred and ten, be, and the same are hereby, amended to read as follows:

“SEC. 5. That the treasurer of every such political committee shall, not more than fifteen days and not less than ten days next before an election at which Representatives in Congress are to be elected in two or more States, file in the office of the Clerk of the House of Representatives at Washington, District of Columbia, with said Clerk, an itemized detailed statement; and on each sixth day thereafter until such election said treasurer shall file with said Clerk a supplemental itemized detailed statement. Each of said statements shall conform to the requirements of the following section of this Act, except that the supplemental statement herein required need not contain any item of which publicity is given in a previous statement. Each of said statements shall be full and complete, and shall be signed and sworn to by said treasurer.

“It shall also be the duty of said treasurer to file a similar statement with said Clerk within thirty days after such election, such final statement also to be signed and sworn to by said treasurer and to conform to the requirements of the following section of this Act. The statements so filed with the Clerk of the House shall be preserved by him for fifteen months and shall be a part of the public records of his office and shall be open to public inspection.

“SEC. 6. That the statements required by the preceding section of this Act shall state:

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"First. The name and address of each person, firm, association, or committee who or which has contributed, promised, loaned, or advanced to such political committee, or any officer, member, or agent thereof, either in one or more items, money or its equivalent of the aggregate amount or value of one hundred dollars or more, and the amount or sum contributed, promised, loaned, or advanced by each.

"Second. The aggregate sum contributed, promised, loaned, or advanced to such political committee, or to any officer, member, or agent thereof, in amounts of less than one hundred dollars.

"Third. The total sum of all contributions, promises, loans, and advances received by such political committee or any officer, member, or agent thereof.

"Fourth. The name and address of each person, firm, association, or committee to whom such political committee, or any officer, member, or agent thereof, has distributed, disbursed, contributed, loaned, advanced, or promised any sum of money or its equivalent of the amount or value of ten dollars or more, stating the amount or sum distributed, disbursed, contributed, loaned, advanced, or promised to each, and the purpose thereof.

"Fifth. The aggregate sum distributed, disbursed, contributed, loaned, advanced, or promised by such political committee, or any officer, member, or agent thereof, where the amount or value of such distribution, disbursement, loan, advance, or promise to any one person, firm, association, or committee in one or more items is less than ten dollars.

"Sixth. The total sum disbursed, distributed, contributed, loaned, advanced, or promised by such political committee, or any officer, member, or agent thereof."

"SEC. 8. That any person may in connection with such election incur and pay from his own private funds for the purpose of influencing or controlling, in two or more States, the results of an election at which Representatives to the Congress of the United States are elected, all necessary personal expenses for his traveling, for stationery, and postage, and for telegraph and telephone service without being subject to the provisions of this Act."

SEC. 2. That section eight, as above amended, and sections nine and ten of said act be renumbered as sections nine, ten, and eleven, and that a new section be inserted after section seven of the said original act, to read as follows:

"SEC. 8. The word 'candidate' as used in this section shall include all persons whose names are presented for nomination for Representative or Senator in the Congress of the United States at any primary election or nominating convention, or for indorsement or election at any general or

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special election held in connection with the nomination or election of a person to fill such office, whether or not such persons are actually nominated, indorsed, or elected.

“Every person who shall be a candidate for nomination at any primary election or nominating convention, or for election at any general or special election, as Representative in the Congress of the United States, shall, not less than ten nor more than fifteen days before the day for holding such primary election or nominating convention, and not less than ten nor more than fifteen days before the day of the general or special election at which candidates for Representatives are to be elected, file with the Clerk of the House of Representatives at Washington, District of Columbia, a full, correct, and itemized statement of all moneys and things of value received by him or by anyone for him with his knowledge and consent, from any source, in aid or support of his candidacy, together with the names of all those who have furnished the same in whole or in part; and such statement shall contain a true and itemized account of all moneys and things of value given, contributed, expended, used, or promised by such candidate, or by his agent, representative, or other person for and in his behalf with his knowledge and consent, together with the names of all those to whom any and all such gifts, contributions, payments, or promises were made, for the purpose of procuring his nomination or election.

“Every person who shall be a candidate for nomination at any primary election or nominating convention, or for indorsement at any general or special election, or election by the legislature of any State, as Senator in the Congress of the United States, shall, not less than ten nor more than fifteen days before the day for holding such primary election or nominating convention, and not less than ten nor more than fifteen days before the day of the general or special election at which he is seeking indorsement, and not less than five nor more than ten days before the day upon which the first vote is to be taken in the two houses of the legislature before which he is a candidate for election as Senator, file with the Secretary of the Senate at Washington, District of Columbia, a full, correct, and itemized statement of all moneys and things of value received by him or by anyone for him with his knowledge and consent, from any source, in aid or support of his candidacy, together with the names of all those who have furnished the same in whole or in part; and such statement shall contain a true and itemized account of all moneys and things of value given, contributed, expended, used, or promised by such candidate, or by his agent, representative, or other person for and in his behalf with his knowledge and consent, together with the names of all those to whom any and all such gifts, contributions, payments, or promises were made for the purpose of procuring his nomination or election.

"Every such candidate for nomination at any primary election or nominating convention, or for indorsement or election at any general or special election, or for election by the legislature of any State, shall, within fifteen days after such primary election or nominating convention, and within thirty days after any such general or special election, and within thirty days after the day upon which the legislature shall have elected a Senator, file with the Clerk of the House of Representatives or with the Secretary of the Senate, as the case may be, a full, correct, and itemized statement of all moneys and things of value received by him or by anyone for him with his knowledge and consent, from any source, in aid or support of his candidacy, together with the names of all those who have furnished the same in whole or in part; and such statement shall contain a true and itemized account of all moneys and things of value given, contributed, expended, used, or promised by such candidate, or by his agent, representative, or other, person for and in his behalf with his knowledge and consent, up to, on, and after the day of such primary election, nominating convention, general or special election, or election by the legislature, together with the names of all those to whom any and all such gifts, contributions, payments, or promises were made for the purpose of procuring his nomination, indorsement, or election.

"Every such candidate shall include therein a statement of every promise or pledge made by him, or by any one for him with his knowledge and consent or to whom he has given authority to make any such promise or pledge, before the completion of any such primary election or nominating convention or general or special election or election by the legislature, relative to the appointment or recommendation for appointment of any person to any position of trust, honor, or profit, either in the county, State, or Nation, or in any political subdivision thereof, or in any private or corporate employment, for the purpose of procuring the support of such person or of any person in his candidacy, and if any such promise or pledge shall have been made the name or names, the address or addresses, and the occupation or occupations, of the person or persons to whom such promise or pledge shall have been made, shall be stated, together with a description of the position relating to which such promise or pledge has been made. In the event that no such promise or pledge has been made by such candidate, that fact shall be distinctly stated.

"No candidate for Representative in Congress or for Senator of the United States shall promise any office or position to any person, or to use his influence or to give his support to any person for any office or position for the purpose of procuring the support of such person, or of any person, in his candidacy; nor shall any candidate for Senator of the United States

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give, contribute, expend, use, or promise any money or thing of value to assist in procuring the nomination or election of any particular candidate for the legislature of the State in which he resides, but such candidate may, within the limitations and restrictions and subject to the requirements of this act, contribute to political committees having charge of the disbursement of campaign funds.

"No candidate for Representative in Congress or for Senator of the United States shall give, contribute, expend, use, or promise, or cause to be given, contributed, expended, used, or promised, in procuring his nomination and election, any sum, in the aggregate, in excess of the amount which he may lawfully give, contribute, expend, or promise under the laws of the State in which he resides: *Provided*, That no candidate for Representative in Congress shall give, contribute, expend, use, or promise any sum, in the aggregate, exceeding five thousand dollars in any campaign for his nomination and election; and no candidate for Senator of the United States shall give, contribute, expend, use, or promise any sum, in the aggregate, exceeding ten thousand dollars in any campaign for his nomination and election: *Provided further*, That money expended by any such candidate to meet and discharge any assessment, fee, or charge made or levied upon candidates by the laws of the State in which he resides, or for his necessary personal expenses, incurred for himself alone, for travel and subsistence, stationery and postage, writing or printing (other than in newspapers), and distributing letters, circulars, and posters, and for telegraph and telephone service, shall not be regarded as an expenditure within the meaning of this section, and shall not be considered any part of the sum herein fixed as the limit of expense and need not be shown in the statements herein required to be filed.

"The statements herein required to be made and filed before the general election, or the election by the legislature at which such candidate seeks election, need not contain items of which publicity is given in a previous statement, but the statement required to be made and filed after said general election or election by the legislature shall, in addition to an itemized statement of all expenses not theretofore given publicity, contain a summary of all preceding statements.

"Any person, not then a candidate for Senator of the United States, who shall have given, contributed, extended, used, or promised any money or thing of value to aid or assist in the nomination or election of any particular member of the legislature of the State in which he resides, shall, if he thereafter becomes a candidate for such office, or if he shall thereafter be elected to such office without becoming a candidate therefor, comply with all of the provisions of this section relating to candidates for such office, so far as the

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same may be applicable; and the statement herein required to be made, verified, and filed after such election shall contain a full, true, and itemized account of each and every gift, contribution, expenditure, and promise whenever made, in any wise relating to the nomination or election of members of the legislature of said State, or in any wise connected with or pertaining to his nomination and election of which publicity is not given in a previous statement.

"Every statement herein required shall be verified by the oath or affirmation of the candidate, taken before an officer authorized to administer oaths; and the depositing of any such statement in a regular post office, directed to the Clerk of the House of Representatives, or to the Secretary of the Senate, as the case may be, duly stamped and registered, within the time required herein, shall be deemed a sufficient filing of any such statement under any of the provisions of this Act.

"This Act shall not be construed to annul or vitiate the laws of any State, not directly in conflict herewith, relating to the nomination or election of candidates for the offices herein named, or to exempt any such candidate from complying with such State laws."

Approved, August 19, 1911.

Amended, August 23, 1912.

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§ 942.

Ruling by Speaker Clark June 13, 1912, on power
§ 942 of conferees on conference report on
Army appropriation bill, sustaining conference report:

On page 20 of the bill, in line 11, the House inserted a provision:

"For travel allowance to enlisted men on discharge, \$900,000."

The Senate added a proviso:

"*Provided*, That hereafter when an enlisted man who is enlisted on or before July 1, 1912, is discharged from the service, except by way of punishment for an offense, he shall be entitled to transportation in kind, etc."

All that the conferees did to that Senate amendment was, in line 1 of the amendment, after the word "man," to strike out all down to and including the comma after the word "twelve"; and those words are:

"Who is enlisted on or after July 1, 1912."

All that that does is simply to broaden it, and it is not a parliamentary question. It is a question for the court to decide whether those men are entitled to the pay they otherwise would have received. The Chair therefore overrules the point of order.

On page 38 of the bill the House inserted a proviso, beginning on line 12, as follows:

"*Provided further*, That no part of this appropriation shall be expended at any Army post which the Secretary of War has decided or may decide to abandon in the interest of the service."

The Senate struck that out. The conferees then inserted a proviso on the same subject, appointing a commission to inquire into and advise the Secretary of War, or anybody seeking information upon that subject, what Army posts should be abandoned; and the rest of the proviso is simply detail thereof. It has been repeatedly held—I do not know by how many Speakers, but by more than one—that in a case like that, where there is no departure from the subject matter—and the subject matter in this case is the abandonment of Army posts, and the reciting of 25 Army posts was simply a detail—a commission might be appointed. The Chair calls attention to one case where a bill was brought in providing for the construction of a public road. The conferees changed that so as to appoint a commission for a survey of the public road. That was held to be in order. The subject matter of this amendment or proposition is the abandonment of Army posts. The matter that the conferees put into it is simply a detailed arrangement of how to get at abandoning the Army posts.

The Chair therefore overrules that point of order.

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The next point of order is the one made to section 6, which treats of the consolidation of the establishments of the Adjutant General, the Inspector General, and the Chief of Staff. It is a very long section. It fixes the term, among other things, of the Chief of Staff. It fixes the length of recess, if the Chair may be permitted to use that term, that any man who holds that position shall take from that office.

It may be that it is simply the reenactment of an existing statute; if it is not, it is very close to it. Now, it treats of the subject of the General Staff and the Chief of Staff. The Chair has nothing to do, as the Chair stated to the gentleman from Indiana [Mr. Crumpacker], with the motives or quarrels that have been going on in the War Department about the Chief of Staff and several other things. It does not make any difference how it got in, and it does not make any difference, so far as the parliamentary situation is concerned, as to the effect of it on individuals. The only question is whether this matter, inserted by the conference committee, is germane to the proposition touching the Chief of Staff. The Chair thinks it is, and the point of order is overruled.

After further debate,

The SPEAKER. The reason why the Chair invited argument upon this amendment is that day before yesterday, when the gentleman from Illinois [Mr. Prince] made his points of order, he very kindly, at the suggestion of the Chair, furnished the Chair with a copy, and the Chair had Judge Crisp, parliamentary secretary, hunt up the authorities and examine them. The Chair had formed somewhat of a general opinion, not fixed, but subject to revision, on the points of order suggested by the gentleman from Illinois [Mr. Prince]; but this one, the most difficult of all of them, the gentleman from Illinois had not noted before, and it came on the Chair unexpectedly.

The gentleman from Illinois [Mr. Prince] and Members holding his views have argued the question elaborately, and the truth is that the reason why the Chair invited gentlemen on the other side to argue it is that the Chair was very much inclined at that time to hold with the gentleman from Illinois, and did not need any more instruction from that point of view. Now the whole matter has been argued elaborately.

The paragraph over which this controversy arises is subheaded "Water and sewers at military posts."

The proviso which the House put in is as follows:

"That no part of this appropriation shall be expended for permanent improvements at any of the following-named Army posts."

Here follows a list of 25 Army posts, including Fort D. A. Russell. The Senate struck out the proviso, the gist of which is "permanent improvements." The conferees inserted the following words in lieu of the proviso:

“Provided, That not exceeding \$1,000 of the sum herein appropriated, together with the unexpended balance, which is hereby reappropriated, of the appropriation in the Army appropriation act approved March 3, 1911, for the improvement of the Crow Creek or Fort D. A. Russell target and maneuver reservation, Wyoming, may be expended by the Secretary of War, in his discretion, in the acquirement by purchase or condemnation proceedings of certain tracts of land required for the maneuvering of troops and other military purposes, lying within the limits of the aforesaid reservation.”

There are two general rules governing conferences. The first is that conferees can not inject into a bill an absolutely new subject, and the second is that what they do inject into a bill must be germane. The view of the Chair is that in the ordinary construction of language this proviso is separated entirely from the preceding part of this section. The paragraph is headed, “Water and sewerage at military posts.” It treats of that. Then comes the proviso “That no part of this appropriation shall be expended for permanent improvements at any of the following-named Army posts.”

That introduces a brand-new subject, namely, permanent improvements. We have knowledge that what the House was trying to do, or preparing the way to do, was to get rid of these 25 posts. That was the view of the House. The bill went over to the Senate, and the Senate struck out that whole proviso. Some of us know, I think, how it came to be stricken out. Of course, it is not the business of the Chair to comment on the Senate or any Senator thereof, but when you consider what was put in at last it does not require a very difficult process of reasoning to find out how it happened to be put in. The House conferees had to agree to this proposition made by the Senate conferees, otherwise there would have been no agreement in conference.

During the time that this exceedingly interesting debate has been going on various gentlemen have suggested various things and cited various authorities. So far as the Chair has been able to ascertain, the authorities he is going to read now seem to be very nearly in point, and these authorities have largely influenced his opinion.

In the second session of the Fifty-eighth Congress (Record, pp. 410-411; Journal, pp. 423-424) Mr. Speaker Cannon delivered a very elaborate opinion, and here is the rule which he laid down:

“It is true that if the whole paragraph in the bill as it passed the House had been stricken out”—

And that part of it is exactly what happened in this case—

“and a substitute therefor proposed by the Senate”—

That did not happen—

“or if the Senate had stricken out the paragraph without proposing a substitute, and the House had agreed to the amendments of the Senate, then

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the conferees might have had jurisdiction touching the whole matter and might have agreed upon any provision that would have been germane."

That is the general rule, as Speaker Cannon laid it down, and it fits this case. Then in section 6422 of Hinds' Precedents—this is Speaker Carlisle's decision. On August 3, 1886, the House had under consideration the report of the committee of conference on the river and harbor bill. Mr. William M. Springer, of Illinois, made the point of order that the conferees had included new matter in their report. The Speaker ruled:

"The House passed a bill to provide for the improvement of rivers and harbors and making an appropriation for that purpose. That bill was sent to the Senate, where it was amended by striking out all after the enacting clause"—

Now, that is exactly the same state of case as Mr. Speaker Cannon passed on—

"and inserting a different proposition in some respects, but a proposition having the same object in view. When that came back to the House it was treated, and properly so, as one single amendment, and not as a series of amendments, as was contended for by some gentlemen on the floor at the time.

"It was nonconcurrent in by the House, and a conference was appointed upon the disagreeing votes of the two Houses. That conference committee having met, reports back the Senate amendment as a single amendment with various amendments, and recommends that it be concurred in with the other amendments which the committee has incorporated in its report. The question, therefore, is not whether the provisions to which the gentleman from Illinois alludes are germane to the original bill as it passed the House, but whether they are germane to the Senate amendment which the House had under consideration and which was referred to the committee of conference. If germane to that amendment, the point of order can not be sustained on the ground claimed by the gentleman from Illinois. The Chair thinks they are germane to the Senate amendment, for, though different from the provisions contained in the Senate amendment, they relate to the same subject, and therefore the Chair overrules the point of order."

Ruling by Speaker Clark on power of conferees.

§ 942A. Rendered on August 17, 1912, second session Sixty-second Congress, page 11176, on naval appropriation bill. Points of order sustained, which rejected report of conferees.

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The House having under consideration the conference report on the bill (H. R. 24565) making appropriations for the naval service for the fiscal year ending June 30, 1913, and for other purposes,

Mr. Fitzgerald made the point of order that the conferees have exceeded their authority by including matters in the report not in disagreement between the two Houses.

After debate,

The Speaker sustained the point of order, and said:

There is no question at all in the mind of the Chair but that these points of order must be sustained. As it is a question which is liable to arise several times very soon, the Chair will state his position as to his understanding of it.

The rule is this: That the conferees can not go beyond something that is in the original bill—that is proposition No. 1; or in the Senate amendment, and that is proposition No. 2; or in the House amendment to the Senate amendment, and that is proposition No. 3.

That rule is as old as the 23d day of June, 1812, and it is barely possible that it is older. But, on the 23d of June, 1812, Henry Clay rendered an opinion of which that is the substance.

It has been stated variously by various Speakers. Speaker Crisp stated the matter with perfect clarity. In *Hinds' Precedents*, section 6408, volume 5, Speaker Crisp said:

"The question for the Chair to determine is whether the amendment which has been agreed to and reported by the conference committee is germane to the amendment of the Senate or to the original bill. The amendment may not be germane to the original bill, yet if it is germane to the Senate amendment the conference committee might report it.

"The Chair thinks that the practice of enlarging the powers of conference committees beyond the strict letter of the rule was wrong; that conferees ought to be held to the rule, and that amendments they propose in conference reports shall be germane either to the original text or to the amendment."

Let us apply these principles to these points raised by the gentleman from New York [Mr. Fitzgerald]. Of course, everybody understands that the Chair is not ruling the way he would like to see the bill go. The Chair would like to see mining operations started in Alaska in a proper way, but this is not the proper way to do it.

Page 51, line 22, the language of the bill was: "That all officers authorized in this act, etc., shall receive." The conferees inserted, after the word "officers," the words "of the dental corps," so that it will read "All officers of the dental corps" shall do so and so.

Mr. Speaker Cannon rendered an opinion involving that precise point. In volume 5, *Hinds' Precedents*, section 6417, the headlines or syllabi read as follows:

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"The managers of a conference must confine themselves to the differences committed to them. Managers of a conference may not change the text to which both Houses have agreed."

Of course that simply states the rule. Here is the case itself:

"On March 7, 1904, Mr. Henry H. Bingham, of Pennsylvania, called up the conference report on the legislative appropriation bill.

"Thereupon Mr. James R. Mann, of Illinois, made the point of order that the managers of the conference had exceeded their authority in relation to a certain paragraph of the bill, which, with the Senate amendments (which are italicized), appeared as follows in the printed copy:

" 'No part of any money appropriated by this act shall be available for paying expenses of horses and carriages or drivers therefor for the personal use of any officer provided for herein by this act other than the President of the United States, the heads of executive departments, and the Secretary to the President.' "

The conferees inserted the words "or any other" before the word "act," making it read "this or any other act," and also inserted the words "by this or any other act," so that it would read "for the personal use of any officer provided for by this or any other act, other than the President," and so forth.

Speaker Cannon said:

"The managers have inserted between the words 'personal' and 'use' the words 'or official.' Mr. Mann insisted that this amendment of the text, to which both Houses agreed, was beyond the power of either House, and, consequently, beyond the power of the conferees, citing the precedent of April 23, 1902."

After debate, Speaker Cannon withheld his decision, evidently wanting to investigate the matter.

Here is the sum and substance of Speaker Cannon's decision:

"This provision in the conference report inserts legislation that never was before the House or before the Senate, and it was quite competent for the conferees, if they could do this, to have stricken out the whole paragraph and inserted anything that was germane. They could have stricken out the words 'other than the President of the United States, the heads of executive departments, and the Secretary to the President'; and while there were but two words inserted, the provision, if enacted into law, would be far-reaching and would run along the line of the whole public service."

Now, that is just exactly this case as to this particular amendment.

Speaker Cannon goes on to say:

"As to the wisdom of such a provision, the Chair is not called upon to intimate any opinion. It is for the House and the Senate to determine upon

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the wisdom of it, and, as the House and the Senate never have considered that proposition, the Chair is of opinion that the conferees exceeded their power, and therefore sustains the point of order."

The second point of order is that on page 30, beginning with line 23—and it does not make any difference as far as the parliamentary points are concerned how desirable it is to mine coal in Alaska. The Chair thinks it very desirable, and would agree with the gentleman from Missouri [Mr. Shackelford] on the desirability of it; but that is neither here nor there.

The language of the Senate amendment was:

"That \$75,000 of said sum, or so much thereof as may be necessary, may be used for the survey, investigation, and report upon coal and coal fields available for the production of coal for the use of the United States Navy, or any vessel of the United States."

The conferees inserted a proposition for mining coal, and surely there is a wide difference in the proposition to survey, investigate, and report upon coal and coal fields and a proposition for the mining of coal. That point must also be sustained.

In amendment 7, on page 5 of the bill, line 24, it is provided:

"Hereafter any naval officer on the retired list may, in the discretion of the Secretary of the Navy, be ordered to such duty as he may be able to perform at sea or on shore, and while so employed in time of peace shall receive the pay and allowances of an officer of the active list of the grade from which he was retired."

The conferees inserted into that amendment these words, "of the Navy or Marine Corps," and also inserted the words, "with his consent," and made some other minor changes. The Chair may be wrong about it, but the Chair believes that the Navy and Marine Corps are two different institutions, and sustains the point of order in that regard. The point of order made against the conference report on amendment No. 87 is also sustained.

So the four points of order made by the gentleman from New York are sustained.

Ruling by Speaker Clark December 5, 1912, Sixty-second Congress, third session, on germaneness of instructions contained in motion of Mr. Mann to recommit bill providing for physical valuation of railroads.

The SPEAKER. The Chair has investigated the parliamentary phase of this question fully. We have not anything to do here with the merits of the substance of the motion to recommit which was submitted by the gen-

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tleman from Illinois [Mr. Mann]. If that proposition were submitted in a bill; or if the Chair thought it was germane, he would be very much in favor of it. It is not necessary in this opinion, but it is stated anyhow, that the issue of stocks and bonds by public-service corporations ought to be regulated by law. That, however, has nothing to do with this preliminary question which is pending here now.

The rule about motions to recommit is this: A proposition is not germane in a motion to recommit unless it would have been germane as an amendment to the bill.

The authorities all run one way. I have investigated them carefully. The proposition laid down by the gentleman from Pennsylvania [Mr. Olmsted] is partly correct and partly incorrect. It does not go to the extent which he undertook to make it go. The rule is not that, if there are two substantive propositions in a bill you can add anything else to it. The rule is that on such a question as admitting Territories into the Union as States; if you were trying to admit Idaho, for instance, alone, you could not add Montana and Washington, and so forth. But if you turn it around the other way and make the bill general in its character to admit Montana and Idaho and Washington, then you might add to it, as an amendment, Wyoming, for instance.

At one time there was a proposition pending to appropriate money to destroy the boll weevil and the gentleman from Massachusetts [Mr. Gillett] offered a proposition to add some money to destroy the gypsy moth. Mr Speaker Cannon held that there was no connection between the two propositions, and ruled out the amendment of the gentleman from Massachusetts.

There have been divers and sundry rulings of that kind. In the case cited by the gentleman from Pennsylvania [Mr. Olmsted], when the House was expressing its opinion as to what the Turks were doing to the Christians over in Turkey, that was the subject matter. The resolution was to express our horror of what they were doing, and the gentleman from Iowa, Mr. Hepburn, offered an amendment which was more emphatic in its expression of horror than any of the rest, proposing to give the Turkish ambassador his passport. Consequently it was held to be germane.

During the term of the present Speaker a proposition was up to prohibit the trading in cotton futures on the exchanges of the country. Some Member offered an amendment to that proposition to include wheat and corn and other products. The Chair ruled it out by citing all these precedents which he has just cited and some additional ones. The Chair was more in favor of prohibiting the dealing in futures in wheat and corn than on cotton, because he has more to do with those products, but that fact did not

have anything to do with the parliamentary point. Therefore he sustained the point of order made against the germaneness of the amendment.

The situation here is that the Committee on Interstate and Foreign Commerce brings in a bill which deals with one subject, and one subject only, and that is to fix a physical valuation of railroads. The only reason that they mention bonds or stocks in the bill at all is that, whether right or wrong, in this country we have fallen into the habit of estimating the value of a railroad by counting in both bonds and stocks, one being property and the other being debts. So that evidently the committee, in reporting this bill, thought that out of deference to the rule which prevails in this country we ought to find out what stocks and bonds have been issued. But this bill as reported nowhere provides or says a word about authorizing or directing anybody to issue stocks and bonds. The motion of the gentleman from Illinois [Mr. Mann] to recommit with instructions has entirely to do with the future issuance of stocks and bonds. It seems to be a very elaborate and perfect scheme. The Chair will say that for it. But I have asked the gentlemen who have argued this question in favor of the germaneness of this motion to recommit to point out in the bill a single word or clause that makes the resolution of the gentleman from Illinois [Mr. Mann] germane.

A case in point arose here—and it happened to be on the 1st day of April, 1910—and I will quote from the argument of the gentleman from Illinois [Mr. Mann] in that case, which seems to be absolutely unanswerable. He said:

“Mr. Speaker, the gentleman from New York [Mr. Fitzgerald] referred to amendment 78 of the Senate, and it has been referred to by other gentlemen, as an amendment to the tariff law. It is not an amendment to the tariff. It is a provision which relates to reports required by that law.”

And that is what it was, too.

“But the provision in the Senate amendment is neither in form nor substance an amendment to the tariff law. Now, I insist that the amendment of the gentleman from New York [Mr. Fitzgerald] is not germane to the Senate amendment.”

The Senate amendment provided that a certain section—section 78, the Chair believes it was—in the Payne tariff law about ascertaining the property that the corporations had, in order to levy that tax on them, should only be made public on a resolution of the House or Senate, whereupon Mr. Fitzgerald, of New York, offered an amendment to repeal the entire Payne tariff law. Mr. Mann said:

“An amendment to repeal the tariff act is not germane to that Senate amendment.”

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Mr. Mann, continuing, said further:

"The gentleman from New York is too well acquainted with the rules of the House not to know that this amendment which he offers is not germane. If the gentleman from New York, while the Senate amendment was before the House, had proposed an amendment similar to that which he now offers to this amendment, any chairman would have held it out of order as not a germane amendment to the proposition of the Senate. If the gentleman could provide for a repeal of the entire tariff act under the Senate amendment, then he could have provided for a repeal of a particular part of the tariff act. If it be in order to offer an amendment under the Senate amendment to repeal the entire tariff act, it will be in order—and I wish it were—to repeal the duty on wood pulp and paper [applause], because if it had been in order I should have offered such an amendment."

After a great deal of argument on both sides by distinguished parliamentarians, Mr. Speaker Cannon rendered the following opinion:

"The SPEAKER. The Chair will cause to be read the amendment which has been agreed to.

"The Clerk read as follows:

"Concur with the following amendment:

"Strike out all of amendment No. 78 and insert instead thereof the following:

"For classifying, indexing, exhibiting, and properly caring for the returns of all corporations required by section 38 of an act entitled "An act to provide revenue, equalize duties, encourage the industries of the United States, and for other purposes," approved August 5, 1909, including the employment in the District of Columbia of such clerical and other personal services, and for rent of such quarters as may be necessary, \$25,000: *Provided*, That any and all such returns shall be open to inspection only upon the order of the President, under rules and regulations to be prescribed by the Secretary of the Treasury and approved by the President.' "

Then the Speaker said:

"The SPEAKER. The House will notice that this is a proposition or an amendment covering one specific subject in the tariff act—as to the returns made by corporations. It does not relate to the amount of the tax, the kind of corporations to be levied upon, the time of levying, or touching any other matter, but only and simply the returns of corporations.

"Upon the motion to concur with an amendment, which amendment provides for striking out of the Senate amendment and inserting what has just been read, the previous question was ordered, and the House has, on a yea-and-nay vote, agreed to the amendment, so that is a closed incident.

"Now, the argument of the gentlemen from New York brings up a very ingenious theory"—

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It will be observed that these two gentlemen have swapped places. [Laughter.]

"But the Chair does not feel called upon to decide upon his theory, because it has been held—and, so far as the Chair has been able to ascertain, uniformly held—that where there is a proposition to amend a law in one particular—a specific particular—a proposition to amend generally or to repeal the law would not be germane. The Chair, after a hasty examination, finds as follows:

"Hinds' Precedents, volume 5, page 411:

"'5806. To a bill amendatory of an existing law as to one specific particular an amendment relating to the terms of the law rather than to those of the bill was held not to be germane.'

"Under that decision, if the amendment of the gentlemen had been offered before the previous question operated, it would not have been in order, as the precedents are uniform that you can not by a motion to recommit make that in order which would not have been in order if offered as an amendment. Therefore, the Chair sustains the point of order."

And the Chair sustains the point of order made by the gentleman from Tennessee [Mr. Sims] in this case.

Under Holman rule, amendment changing existing law, under proviso of clause 2, Rule § 944. XXI, must be authorized by House committee having jurisdiction of subject matter of legislation. On January 16, 1912, Chairman Garrett ruled as follows:

The Chair desired to hear the gentleman on the last proviso, but the Chair is inclined to believe that the suggestion made by the gentleman from Illinois [Mr. Mann] is a good one, and that he may rule on the whole thing now.

The language has been read from the Clerk's desk against which the gentleman from Pennsylvania made the point of order. The gentleman from Kentucky makes the point of order against the entire paragraph beginning with the words of the paragraph against which the gentleman from Pennsylvania makes the point of order. The point of order made, as the Chair understands, is that the provision is obnoxious to Rule XXI, clause 2, which reads:

"No appropriation shall be reported in any general appropriation bill or be in order as an amendment thereto for any expenditure not previously

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authorized by law, unless in continuation of appropriations for such public works and objects as are already in progress. Nor shall any provision in any such bill or amendment thereto changing existing law be in order, except such as being germane to the subject matter of the bill shall retrench expenditures by the reduction of the number and salary of the officers of the United States, by the reduction of the compensation of any person paid out of the Treasury of the United States, or by the reduction of amounts of money covered by the bill, etc."

It is insisted that this is new legislation which does not retrench expenditures in the sense and in the spirit of clause 2 of Rule XXI.

When what is called the Holman rule first appeared in the rules of the House of Representatives it was in the following form, as read to the committee by the Chairman a few moments ago:

"No appropriation shall be reported in such general appropriation bills or be in order as an amendment thereto for any expenditure not previously authorized by law unless in continuation of appropriations for such public works and objects as are already in progress, nor shall any provision in any such bill or amendment thereto changing existing law be in order except such as, being germane to the subject matter of the bill, shall retrench expenditures."

It was at the first session of the Forty-fourth Congress that the rule was adopted in that form. At the succeeding session of that Congress the rule was changed and appeared in the rules of the House in substantially its present form.

The only difference is that the rule as it now stands has in the proviso the language, following the word "committee:"

"Or any joint commission authorized by law or the House Members of any such commission."

That continued to be the rule of the House until the rules were revised in the Forty-ninth Congress, when it was dropped. It was then restored to the rules of the House in the Fifty-second Congress, when it first appeared in the present form—that is, as to joint commissions, and so forth—and in this form continued in operation through the Fifty-second and Fifty-third Congresses.

Now, in the form that it appeared at the second session of the Forty-fourth Congress, the first part—not including the proviso—read:

"Nor shall any provision in any such bill or amendment thereto changing existing law be in order, except such as, being germane to the subject matter of the bill, shall retrench expenditures by the reduction of the number and salary of the officers of the United States, by the reduction of the compensation of any person paid out of the Treasury of the United States, or by the reduction of amounts of money covered by the bill."

The language is specific. The language in the rule as it first appeared in the rules of the House at the first session of the Forty-fourth Congress was general in character, very like unto the language which appears now in the proviso to the rule, which proviso reads as follows:

"Provided, That it shall be in order further to amend such bill upon the report of the committee or any joint commission authorized by law, or the House members of any such commission having jurisdiction of the subject matter of such amendment, which amendment, being germane to the subject matter of the bill, shall retrench expenditures."

The Chair is of opinion that the change in the rule from its original form, as adopted in the first session of the Forty-fourth Congress, was made for a purpose, and that it was the intention, and is now the intention, of the rule to fix the specific manner in which the Committee on Appropriations, reporting a proposition changing existing law, or any individual Member of the House of Representatives offering an amendment from the floor which will change existing law, may make that amendment in order; that is, it must be in one of three ways, by the reduction of salaries or by the reduction of the number of employees or by the reduction of the amount covered by the bill.

The Chair is of opinion that the Committee on Appropriations may not, under the rule, bring in as an integral part of an appropriation bill substantive legislation that, if introduced in the ordinary way in the House—that is, by bill or joint resolution presented by a Member—would go to another standing committee of the House for consideration and action; nor does the Chair think that any Member of the House may offer from his place on the floor any amendment carrying such substantive legislation, even though that legislation would retrench expenditures, unless that Member offer it as the report of a committee or as a member of a joint commission which would have jurisdiction of the subject matter under the rules of the House. In other words, the scope is limited and the outposts are fixed by the rule to which the Committee on Appropriations may go or the individual to which Member may go.

If the Chair be correct in this, what have we here? There is proposed here upon this bill substantive legislation, not a reduction of salaries, not a reduction of the number of employees, not perhaps a reduction of the amount covered by the bill, though the Chairman does not deem it necessary to pass upon that now; but even if it were all of those, and in order to carry it out it were necessary to enact new law, to create a new industrial enterprise, a new project not now provided for by law, would it be in order? The Chair thinks not, except it be upon a report of the committee which would have jurisdiction of the subject matter if introduced as an original bill in the House of Representatives, in this case the Committee on the District of Columbia.

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The Chair is fortified in this opinion by a ruling which was made at the first session of the Fifty-second Congress. At that time the following provision in the Army appropriation bill, namely, that hereafter no money appropriated for Army transportation shall be used in payment for the transportation of troops and supplies of the Army "over certain lines of railroad which are indebted to the Government," was held not in order under this rule. That decision is as follows, and the Chair will ask the Clerk to read it.

The Clerk read as follows:

"The point of order made by the gentleman from Texas [Mr. Crain] is against the second provision on page 16 of the bill, which declares:

"That hereafter no money appropriated for Army transportation shall be used in payment of the transportation of troops and supplies of the Army over any of the nonbonded lines owned, controlled, or operated by the Union Pacific Railway Co. (including the lines of the Oregon Short Line and Utah Northern Railway Co.) or by the Southern Pacific Co. over lines embraced in its Pacific system.'

"Under the view taken by the Chair the relations between the Government and these railroad companies, as determined by the Supreme Court or otherwise, can not affect the decision of this point of order.

"The gentleman from Indiana [Mr. Holman] contends that this proposed new legislation is in order in an appropriation bill under the proviso of the second section of Rule XXI, which says:

"It shall be in order further to amend such bill upon the report of the committee having jurisdiction of the subject matter of such amendment, which amendment, being germane to the subject matter of the bill, shall retrench expenditures.'

"The Chair is of opinion that a motion of that kind should come officially from the committee having jurisdiction and can not be brought before the Committee of the Whole House on the state of the Union as an integral part of an appropriation bill reported by the regular Committee on Appropriations."

Bottoming his action upon the reasoning which the Chairman has endeavored to state and buttressed by the precedent which has just been read, the Chairman sustains the point of order made by the gentleman from Pennsylvania [Mr. Olmsted] and the gentleman from Kentucky [Mr. Johnson].

Ruling of Chairman Saunders construing Holman rule on retrenching expenditures, rendered February 9, 1912.

The point of order made against the amendment offered by the gentleman from Virginia is that it changes existing law. This is admitted. But it is

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urged in support of the amendment which is admitted to be germane, that it comes within the Holman rule, and is in order on the ground that it retrenches expenditure.

The Chair desires to place its ruling upon a foundation of authoritative precedent, and to conform to the established and familiar canons of parliamentary construction.

Many rulings have been made under the Holman rule. The Chair has examined these rulings in detail. Some of them are conflicting in part. Others are absolutely irreconcilable. Still others are harmonious and consistent, and may be cited as authority in point. One of these rulings was made upon an amendment offered by the gentleman from Missouri, Mr. De Armond, to a pension appropriation bill. (Congressional Record, 1, 52, p. 1792.) This amendment consisted merely in the addition of the words was "or other," to the existing law.

The point was promptly made that this amendment did not show on its face that it retrenched expenditures.

In this connection it is proper to state that it has been expressly held by Speaker Kerr, and concurred in by Chairman William L. Wilson, that in determining whether an amendment will operate to reduce expenditures, the Chair can look to the law of the land, so far as it is applicable. (Hinds, vol. 4, p. 595.)

The effect of the amendment offered by the gentleman from Missouri, Mr. De Armond, was to increase the number of persons prohibited from the benefits of a particular clause of the pension law, thereby reducing the number of pensioners, as a necessary sequence. A reduction in the number of pensioners carried with it a reduction in the amount that would be paid out for pensions under the general head of pension appropriations. The De Armond amendment was held to be in order. It will be noted that this amendment was not directed to the amount of money actually appropriated by the bill. In terms it did not reduce the aggregate amount specifically carried for the payment of pensions. But the Chair was justified in concluding, certainly it so concluded, that in the execution of the pension laws the amount otherwise required for the purposes of pensions would be reduced by the De Armond amendment.

There are a few general principles heretofore announced for the interpretation of the Holman rule proper to be stated in this connection. I quote again from Mr. Chairman Wilson, concurring with Speaker Kerr.

The purpose of the rule (the Holman rule) is most beneficent and proper, and it should have a liberal construction in the interest of retrenchment. (Hinds, vol. 4, p. 594.) Mr. Kerr was universally recognized as a learned and skillful parliamentarian. Mr. Wilson was an exceptionally brilliant and accomplished scholar.

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In this connection the Chair will state that it is not necessary for an amendment to be in order that it should be specifically directed to a reduction in terms of an amount carried in a bill. Of course if it is addressed to such an amount, and reduces the same in terms, it will be in order. As for instance if the sum of \$1,000,000 is appropriated for a designated purpose pursuant to the requirements of existing law and an amendment is submitted reducing this amount to \$995,000, such an amendment will be in order. But the Holman rule admits of other amendments in order. The language of the rule is to the effect that germane amendments changing existing law are in order provided they retrench expenditures by the reduction of amounts of money covered by the bill.

The words "amounts of money covered by the bill" refer not only to the amounts specifically appropriated by the bill, but to the amounts required under the different heads or items of expense to which the bill relates. And if the necessary effect of an amendment is to reduce in the operation of the departments or bureaus for which appropriations are made the amount otherwise required for any one or more heads or items of expense, then a retrenchment has been effected by a reduction of the amounts of money covered by the bill. It is only in this view of the rule that the De Armond amendment was in order. This amendment contemplated that in a system involving payments to pensioners, whatever the appropriations might be, the amount actually required for the administration of the law would be appreciably reduced by a reduction in the number of pensioners. The Chair is not unmindful of the proviso in the second section of Rule XXI, but whatever meaning may be given to the proviso it should not be construed to take away powers definitely given by the preceding paragraph. This paragraph permits germane amendments to change existing law provided they retrench expenditures in one of three ways. That proviso allows further amendments on the report of the committee having jurisdiction provided they reduce expenditures. If the committee offers germane amendments reducing expenditures in any way they will be in order and it will not be necessary to refer them to one of three heads. Power of action being plainly given by the paragraph standing alone, the proviso will not be deemed to take it away unless such intention is plainly manifested. The two sections will be construed to stand together, and amendments offered, whether under the first paragraph or the proviso, will be tested by the requirements of the head under which they appropriately fall. This is certain to give a liberal construction to the rule as a whole, in the interests of retrenchment.

The Chair will further say that it is not enough for the Chair to think that an amendment may reduce expenses, or that it is likely to reduce expenditures.

The precedents say in this connection that the amendment, being in itself a complete piece of legislation, must operate *ex proprio vigore* to effect a reduction of expenditures. The reduction must appear as a necessary result; that is, it must be apparent to the Chair that the amendment will operate of its own force to effect a reduction. (Manual and Digest, p. 409; Hinds, vol. 4, p. 595.) But is it not necessary for this conclusion of reduction to be established with the rigor and severity of a mathematical demonstration. It is enough if the amendment, in the opinion of the Chair, will fairly operate by its own force to retrench expenditures in one of the three ways indicated. This result must be a necessary result, not a conjectural result or a problematical result. It is true that having reference to the difference of minds, one Chairman might hold that retrenchment would be the necessary result of an amendment, while another Chairman or the committee on appeal might be of a different opinion. But this is inevitable. The law is clear, for instance, that at times a court upon the facts can hold as a matter of law that there was no negligence. Still upon the same facts one court will derive this conclusion, while another court on appeal will reach a different conclusion. The ruling of the Chair on these points is subject to appeal to the committee.

What does this amendment propose to do? The present law provides for an establishment of 15 Cavalry regiments. The proposed amendment limits the number of Cavalry regiments to 10. It is difficult for the Chair, by any fair process of reasoning, having reference to known facts, and the relative proportion between the branches of the Army, to see how 15 regiments of Cavalry can be maintained as cheaply as 10, or that a reduction of the Cavalry regiments from 15 to 10 will not effect a reduction in the amount which would be otherwise expended on this branch of the Army under existing law.

This amendment looks to the future, and while it provides for the officers, there is no provision for the retention of the men. But even if the men are retained, there will be a necessary reduction in the matter of horses, equipment and forage, and so forth, in the case of 10 regiments as compared with 15. Moreover, fewer officers will be required for the military establishment upon a basis of 10 Cavalry regiments as against the existing 15. These results are certain. It is altogether problematical that such additions will be made to the Infantry that the economies effected by reducing the Cavalry regiments from 15 to 10 will be required to meet these additions to the Infantry, or to other branches of the service. Fairly considered, the necessary effect of the reduction in regiments proposed by the amendment under consideration is a retrenchment of expenditures. If the Chair was required to determine the precise amount saved by this amendment, he would be

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compelled to rule it out of order. That would be a matter of speculation. But it is clear that a reduction will be effected by the necessary operation of his amendment.

The Chair will cite some additional precedents in support of his ruling:

In an amendment providing that a certain class of persons, now on the pension rolls, shall hereafter not receive pensions, the retrenchment of expenditure is apparent and the amendment is in order. (Manual and Digest, p. 409.)

To the pension appropriation bill a proposed amendment transferring the Pension Bureau from the Department of the Interior to the War Department, also providing that the offices of Commissioner and Deputy Commissioner of Pensions be abolished and that the duties of these offices be performed by Army officers, to be designated for that purpose, without additional pay, was held to be in order, being germane and retrenching expenditures in the manner provided by the rule. (W. G. Wilson, chairman, Hinds, vol. 4, 3887.)

An amendment to the pension appropriation bill providing that no fee shall be paid to a member of an examining board for services in which he did not actually participate is not subject to a point of order under this rule, since while it changed existing law its effect is to reduce expenditures by decreasing compensation. (Congressional Record, 52d Cong., 1st sess., p. 1792.)

The Chair does not undertake to fix in terms the amount of reduction that this amendment will carry, but that a reduction will follow seems to be a fair and necessary conclusion from its provisions.

The Chair wishes to say in conclusion that it has sought to construe this rule in conformity with the precedents and its manifest intent, so as to give it vital force and effect and enable the committee operating under its provisions to accomplish some positive results in the way of economic achievement. In the words of Speaker Kerr, it is a beneficent rule. It should be construed to secure beneficent results.

This ruling of the Chair does not take from the committee a particle of authority. In the first instance the Chair must be satisfied that the necessary effect of an amendment offered under the Holman rule will be a retrenchment of expenditures in conformity with the rule, but from this ruling of the Chair holding the amendment to be in order an appeal may be taken, and the committee in the exercise of its authority of ultimate interpretation can reverse the Chair if it is in error and fix the interpretation which the committee in its wisdom thinks the rule should carry. The Chair overrules the point of order.

Legislation in order on appropriation bill under
 § 946. Holman rule if germane and reduces
 amount covered by the bill. Chair-
 man Johnson of Kentucky, on June 21, 1912, made
 the following ruling:

The bill as presented to the House contains this paragraph:

"Enlarging the Capitol Grounds: To continue the acquisition of the land described in the sundry civil appropriation act, approved June 25, 1910, and as authorized and prescribed in said act, for enlarging the Capitol Grounds, \$500,000: *Provided*, That in addition to the persons named in the said sundry civil act the Speaker of the House of Representatives shall be a member of the commission constituted to acquire said land and hereafter any three members thereof shall constitute a quorum and be competent to transact the duties devolving on them."

As to that paragraph the gentleman from Tennessee [Mr. Sims] reserved a point of order as to all that which comes after the word "*Provided*." The gentleman from Mississippi [Mr. Sisson] reserved and made a point of order to the entire paragraph. The Chair, in ruling, overruled the point of order to everything in the paragraph before the word "*Provided*" and sustained the point of order for everything that followed the word "*Provided*." When that ruling was made, that entire paragraph was then out of the bill for every purpose.

The gentleman from New York [Mr. Fitzgerald] then offered the following as an amendment to the bill:

"Enlarging the Capitol Grounds: To continue the acquisition of land described in the sundry civil appropriation act, approved June 25, 1910, and as authorized and prescribed in said act, for enlarging the Capitol Grounds, \$500,000."

Thereupon the gentleman from Mississippi [Mr. Sisson] offered as a substitute to that amendment repealing the act referred to in the amendment which authorized the appropriation of \$500,000.

The question is now raised upon a point of order as to whether the substitute offered by the gentleman from Mississippi is permissible under what is commonly known as the Holman rule, which is section 2 of Rule XXI, and which reads as follows:

"No appropriation shall be reported in any general appropriation bill, or be in order as an amendment thereto, for any expenditure not previously authorized by law unless in continuation or appropriations for such public works and objects as are already in progress. Nor shall any provision in any

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such bill or amendment thereto changing existing law be in order, except such as being germane to the subject matter of the bill, shall retrench expenditures by the reduction of the number and salary of the officers of the United States by the reduction of the compensation of any person paid out of the Treasury of the United States, or by the reduction of amounts of money covered by the bill: *Provided*, That is shall be in order further to amend such bill upon the report of the committee or any joint commission authorized by law or the House Members of any such commission having jurisdiction of the subject matter of such amendment, which amendment being germane to the subject of the bill, shall retrench expenditures."

The Chair thinks that nothing which comes in the above rule after the word "*Provided*" need be considered in determining the point of order. The question hinges solely upon that part of the Holman rule which is quoted, which comes before the word "*Provided*." The pertinent part of that section of the Holman rule reads as follows:

"Nor shall any provision in any such bill or amendment thereto changing existing law be in order, except such as, being germane to the subject matter of the bill, shall retrench expenditures by the reduction of the number and salary of the officers of the United States by the reduction of the compensation of any person paid out of the Treasury of the United States, or by the reduction of amounts of money covered by the bill."

The first question which arises is: Can there be legislation in an appropriation bill under that part of the rule which I have just read? It seems quite evident to the Chair that under the rule there can be legislation, because the rule says—

"Nor shall any provision in any such bill or amendment thereto changing existing law be in order, except"—

and so forth. That clearly implies that existing law may be changed because of the use of the words therein, "changing existing law."

If existing law can be changed, under the rule it must be germane, and so the next question arises as to whether or not the substitute offered by the gentleman from Mississippi [Mr. Sisson] is germane to the amendment offered by the gentleman from New York [Mr. Fitzgerald].

We are all familiar with the meaning of the word "germane," in its legislative sense at least, but inasmuch as a dictionary lies on the table before the Chair, the Chair has taken occasion to get the definition from that, and the definition that it gives is—

"Any close relationship to."

The amendment offered by the gentleman —

MR. FITZGERALD. Mr. Chairman, I can refer the Chair to a decision made on the 1st of April, 1910, that an amendment proposing to repeal a law is

not in order as an amendment or substitute to an amendment modifying one section of the law. It was decided on April 1, 1910.

The CHAIRMAN. The Chair would have preferred not to have had his chain of thought broken, but to have had the precedent presented to him later. Before finally ruling the Chair will look at the reference mentioned by the gentleman from New York. When interrupted by the gentleman from New York the Chair was dealing with the word "germane" and was about to read, and will now read, from the amendment offered by the gentleman from New York, which treats of the act approved June 25, 1910, which authorizes this appropriation. The substitute offered by the gentleman from Mississippi proposes to repeal the act which is mentioned in the amendment offered by the gentleman from New York.

The Chair is of opinion that there is such a close relationship between the two that the substitute offered by the gentleman from Mississippi in treating of the act of June 25, 1910, is germane to the amendment offered by the gentleman from New York in treating of the same act—that of June 25, 1910.

The Chair is, up to this time, of the opinion that under the Holman rule there is a right to change existing law provided it is germane; and provided, further, it meets any one of the other conditions set out in the rule. The Chair first rules that the substitute offered to the amendment is germane. Before the substitute can be held to be subject to a point of order, or that it is not subject to a point of order, other parts of the Holman rule must be applied to the item as tests. If existing law can be changed in an appropriation bill provided it is germane, it must have one or the other of the additional qualifications. It must, in one instance, in addition to being germane, retrench expenditures by the reduction of the number and salary of the officers of the United States. The substitute offered by the gentleman from Mississippi to the amendment does not meet that requirement of the rule. Next, in order that it may be in order the substitute offered by the gentleman from Mississippi must be a reduction of the compensation of any person paid out of the Treasury of the United States. It does not come under that requirement of the rule. The Chair is of the opinion, however, that it does come under the next requirement, which reads as follows:

"Or by the reduction of the amounts of money covered by the bill."

The Chair first holds that existing law under the Holman rule can be changed, provided it is germane, and the Chair holds that it is germane. Further, that it is good provided it reduces the amount of money covered by the bill. The Chair holds that it does reduce the amount of money covered by the bill to the extent of \$500,000.

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Now, as to the suggestion made by the gentleman from Kentucky [Mr. Sherley] that if the contention of the gentleman from Mississippi were correct all offices could be abolished. The Chair is not called upon to decide that point and will not do so; but, in passing, it may be remarked that there is a provision in the Holman rule for the reduction of the number and salary of officers of the United States. If the Chair were called upon to decide that point he would, as on the present occasion, decide it just as he has the point which is now raised.

The amendment offered by the gentleman from New York treats of the act approved June 25, 1910, which authorizes the expenditure of \$500,000 a year for the enlargement of the Capitol Grounds. The gentleman from Mississippi has offered a substitute for the repeal of that act. Now, the gentleman from Mississippi, in offering his substitute, did not refer to the act by its title and date of its approval, but he did more than that, he referred to it by its title, the date of its approval, and then quoted every word of the act, so it occurs to the Chair there is no escape under the conditions from the conclusion that the substitute is germane to the act. The Chair overrules the point of order, and in doing so agrees with the position taken by the gentleman from New York [Mr. Fitzgerald] in his contention upon a former occasion with the then presiding officer of the House.

Ruling by Chairman Alexander, construing clause
3, rule 21, relating to revenue bills.

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Decision rendered May 8, 1911, first session, Sixty-second Congress.

The Chair would like to have the attention of the committee. The question presented here is one of very great importance.

During the progress of the general debate suggestions were made by different speakers that they proposed to offer amendments to the pending bill, putting different articles on the free list—rice, sugar, peanuts, wool, and other commodities. The Chair could not help but observe the suggestions, and knowing that later on the question would come up for consideration, felt it his duty to investigate the rule with reference to amendments, as it would be incumbent upon him to determine whether or not these and other amendments that might be suggested would be relevant and germane to the pending bill. The gentleman from Illinois [Mr. Cannon] says that the chairman can defy the will of the majority by a ruling. The Chair does not know that the gentleman from Illinois meant that, but it is hardly necessary for the Chair to remind the committee that the majority of this committee can control this situation. It can determine whether or not

this amendment or other related amendments are relevant or not, and if the Chair errs, can overrule the Chair.

The Chair had nothing to do with formulating the rule. He voted for it, along with other Members of the majority, when the rules were adopted by the House. At that time his attention was not called to it. He had no occasion to consider its significance, but he has given it some consideration in the last day or two, and desires to submit, with some care, his opinion on the rule and its application to the question pending before the committee, because if this amendment is in order under the rule then amendments placing on the free list all the articles now on the dutiable list, one by one or schedule by schedule, would be in order.

The point of order is made by the gentleman from Alabama [Mr. Underwood] that this amendment is not germane to the subject matter in the bill. Gentlemen in discussing this question seem to overlook the significance of the language of the rule, and the attention of the committee is called to section 3, of Rule XXI, as follows:

"No amendment shall be in order to any bill affecting the revenue which is not germane to the subject matter in the bill; nor shall any amendment to any item of such bill be in order which does not directly relate to the item to which the amendment is proposed."

This is a new section of Rule XXI and was adopted for the first time as a part of the rules of the House of Representatives of the Sixty-second Congress, and, so far as the Chair knows, it has never been construed.

In construing this rule it may be well to consider the rule relating to germaneness that has been in force for over 90 years.

Section 7 of Rule XVI provides that—

"No motion or proposition on a subject different from that under consideration shall be admitted under color of amendment."

This rule was adopted in 1789 and amended in 1822, and has been in force ever since and has often been construed.

On March 26, 1897, the tariff bill was under consideration in the Committee of the Whole House on the state of the Union, and the Clerk had read the first paragraph, as follows:

"*Be it enacted, etc.,* That on and after the 1st day of May, 1897, unless otherwise specially provided for in this act, there shall be levied, collected, and paid upon all articles imported from foreign countries or withdrawn for consumption, and mentioned in the schedules herein contained, the rates of duty which are by the schedules and paragraphs respectively prescribed, namely:—"

To this Mr. Alexander M. Dockery of Missouri proposed this amendment:

"*Provided,* That when it is shown to the satisfaction of the Secretary of the Treasury that such articles are manufactured, controlled, or produced

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in the United States by a trust or trusts, the importation of such articles from foreign countries shall be free of duty until such manufacture, control, or production shall have ceased, in the opinion of the Secretary of the Treasury."

Mr. Nelson Dingley of Maine made a point of order against the amendment.

The Chairman ruled as follows:

"The pending bill is a bill to provide revenue for the Government and to encourage the industries of the United States.

"Section 2 of the bill, on page 123, provides that after the 1st day of May the articles thereafter enumerated, when imported, shall be exempt from duty.

"To the first paragraph the gentleman from Missouri, Mr. Dockery, offers an amendment providing that under certain conditions all articles upon the dutiable list shall be transferred to the free list. To that amendment the gentleman from Maine, Mr. Dingley, raises the point of order that it is not in order at that point of the bill. The gentleman from Texas, Mr. Bailey, cites a decision of the then Speaker, the distinguished gentleman from Kentucky, Mr. Carlisle, acting as Speaker pro tempore. The decision, as shown by the Congressional Record, does not carry out the statement upon page 271 of the Digest. That decision held that any amendment must be germane to the general provision of the bill. It did not hold that being germane to the provisions of a bill was permissible at any point. It did hold that the amendment then presented to the bill at the point was admissible.

"The question before the Chair here and now is not whether the committee is liable to reach page 123 of the bill. The Chair can not take into consideration that probability, as suggested by the gentleman from Missouri, Mr. Dockery, but must rule upon the question as it is now presented, to wit, Is the amendment presented germane to this provision? The Chair holds that the amendment is not germane, and therefore sustains the point of order."

On March 17, 1880, the House was considering a bill making appropriations to supply certain deficiencies in the appropriations for the service of the Government for the fiscal year ending June 30, 1880, and for other purposes, among which were deficiency appropriations for the Public Printing Office. Mr. Singleton of Mississippi, offered an amendment for the purpose of repealing the law making the office of Public Printer an appointive office by the President and making the Public Printer an elective officer of the House of Representatives. Mr. McMahon of Ohio, made the point of order

against the amendment, on the ground, among others, that it was not germane to the subject matter of the bill. Mr. John G. Carlisle of Kentucky, sustained the point of order in the following learned and exhaustive opinion, which covers this question. The Chair thinks it would be well at this point to have that opinion read, and will ask the clerk to read it.

The Clerk read as follows:

"The amendment submitted by the gentleman from Mississippi [Mr. Singleton], under instructions from the Committee on Printing, is objected to upon two grounds: First, that it is not germane to the subject matter of the bill under consideration, and, secondly, that it is, in substance, the same as a bill heretofore reported by the Committee on Printing and now pending before the House.

"Notice of this amendment was given several days since, and during the general debate in the Committee of the Whole the Chair was advised that a point of order would be raised against it; so that a reasonable opportunity has been afforded to examine the subject, and the Chair will now state the conclusions at which he has arrived.

"In the absence of an express rule the amendment would not be liable to a point of order upon the ground that it was inconsistent with or not germane to the subject under consideration, for, according to the common parliamentary law of this country and of England, a legislative assembly might by an amendment, in the ordinary form or in the form of a substitute, change the entire character of any bill or other proposition pending. It might entirely displace the original subject under consideration and in its stead adopt one wholly foreign to it, both in form and in substance.

"But ever since the 4th of March, 1789, this House has had a rule which changed the common parliamentary law in this respect, at least as to substitutes, and ever since 1822 as to amendments in any form. The Congress of the Confederation in 1781 adopted a rule in the following words:

"'No new motion or proposition shall be admitted under color of amendment as a substitute for a question or proposition under debate until it is postponed or disagreed to.'

"The House of Representatives of the First Congress, on the 4th of March, 1789, adopted the following rule upon this subject:

"'No new motion or proposition shall be admitted under color of amendment as a substitute for the motion or proposition under debate.'

"It will be observed that each of these rules admitted amendments introducing new motions or propositions if they were not offered as substitutes for the motion or proposition under debate. But in March, 1822, the House changed the rule of 1789 so as to make it read as follows:

"'No motion or proposition on a subject different from that under consideration shall be admitted under color of amendment.'

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"And in this form the rule has stood ever since, and now constitutes a part of the seventh clause of Rule XVI in the recent revision. The rule does not prohibit a committee reporting a bill from embracing in it as many different subjects as it may choose; but after the bill has been reported to the House no different subject can be introduced into it by amendment, whether as a substitute or otherwise.

"When therefore it is objected that a proposed amendment is not in order because it is not germane, the meaning of the objection is simply that it (the proposed amendment) is a motion or proposition on a subject different from that under consideration. This is the test of admissibility prescribed by the express language of the rule; and if the Chair, upon an examination of the bill under consideration and the proposed amendment, shall be of the opinion that they do not relate to the same subject, he is bound to sustain the objection and exclude the amendment, subject, of course, to the revisory power of the Committee of the Whole on appeal.

"It is not always easy to determine whether or not a proposed amendment relates to a subject different from that under consideration, within the meaning of the rule; and it is especially difficult to do so when, as in the present instance, the amendment may, by reason of the terms it employs, appear to have a remote relation to the original subject.

"The subject to which the bill now under consideration relates is very clearly set forth in its title. It is 'A bill making appropriations to supply certain deficiencies in the appropriations for the service of the Government for the fiscal year ending June 30, 1880, and for other purposes.' The appropriations 'for other purposes' contained in the bill do not relate at all to any of the subjects embraced in the amendment and therefore need not be noticed. The words 'for other purposes' are used here, as they usually are, to embrace subjects outside of the main subjects to which the bill relates and which are reported by the committee itself.

"The bill relates to no other subjects than appropriations of money for the purpose stated, 'to supply deficiencies in the appropriations for the service of the Government.' One of the deficiencies which the bill provides for is the Government Printing Office. But the bill carefully enumerates the items for which the appropriation is to be made, and the salary of the Public Printer is not among them.

"The proposed amendment has no relation to the appropriation of money for any purpose. It neither increases nor diminishes the amount proposed to be appropriated by the bill, nor does it in any manner affect the expenditures of the money proposed to be appropriated by the bill. The salary of the Public Printer for the current fiscal year has already been provided for in full, and it does not appear that there is any deficiency on that account.

"The amendment relates solely to the method of choosing a Public Printer, to the nature of the duties to be performed by him, and to the amount of his salary. As already stated, the original bill embraces none of these matters and consequently none of these subjects are now under consideration. It seems quite clear, therefore, that the proposed amendment, if admitted, would introduce for consideration one or more new subjects, and is for that reason prohibited by the express language of the rule.

"Under the rule, as it stood prior to 1822, the amendment, although on a subject different from that under consideration, would be in order, for it is not offered as a substitute for the bill or for the clause under consideration. But, as already noted, the prohibition applies now as well to ordinary amendments as to substitutes.

"Since the adoption of the rule in its present form there have been several decisions under it; and, so far as the Chair has been able to discover, in every instance where an amendment proposed to introduce an entirely new subject it has been excluded. The Chair refers to the Journal of the House, Twenty-seventh Congress, first session, page 223, for a decision by Mr. Speaker White; Journal of the House, Thirtieth Congress, first session, page 737, a decision by Mr. Speaker Winthrop; Journal of the House, Thirtieth Congress, second session, page 645, Speaker Winthrop overruled; Journal of the House, Thirty-first Congress, first session, pages 1509 and 1510, a decision by Mr. Speaker Cobb.

"Having disposed of the point of order upon the first ground presented, it is unnecessary to express an opinion upon the second ground, and the Chair prefers not to do so.

"The fourth clause of Rule XXI provides that 'no bill or resolution shall at any time be amended by annexing thereto or incorporating therewith the substance of any other bill or resolution pending before the House.' Where a proposed amendment differs in any respect from a bill or resolution pending before the House, it will always be more or less difficult to determine whether or not they are substantially the same; and the Chair thinks he ought not to attempt to decide such a question unless it is absolutely necessary to do so.

"The point of order is sustained, and the amendment is excluded."

Under the later practice an amendment should be germane to the particular paragraph or section to which is offered (*Hinds' Precedents*, vol. 5, 5811-5820), and an amendment inserting an additional section should be germane to the portion of the bill to which it is offered. (*Hinds' Precedents*, vol. 5, 5822.)

In determining whether or not an amendment is germane, rulings have been made at various times as follows: To a bill proposing admission of

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one Territory into the Union an amendment for admission of another Territory was held not to be germane (Hinds' Precedents, vol. 5, 5826-5829); to a bill for the relief of an individual, an amendment proposing similar relief for another was held not to be germane (Hinds' Precedents, vol. 5, 5826-5829); to a bill providing for the extermination of the cotton-boll weevil, an amendment including the gypsy moth was held by Mr. Cannon, late Speaker of the House, not to be germane to a bill relating to commerce between the States; an amendment relating to commerce between the States was held not to be germane to an amendment relating to commerce within the several States. (Hinds' Precedents, vol. 5, 5841.)

Many other decisions might be cited construing section 7, Rule XVI, but the above will suffice. To say the least of it, it admits of serious doubt whether or not the proposed amendment is in order under said section 7, Rule XVI.

But the rule here invoked against the amendment goes further than section 7 of Rule XVI. It expressly provides, first, that no amendment to any bill affecting the revenue (and this bill is of that character) shall be in order which is not germane to the subject matter in the bill; and, second, nor shall any amendment to any item of such bill be in order which does not directly relate to the item to which the amendment is proposed. This rule and the provision of Rule XVI referred to should be construed together. It is clear to the mind of the Chair that this rule was intended to further limit the right of amendment, and to make it clear that to be germane the amendment should relate to the subject matter in the bill, and to the particular item in this bill, ought to be amended.

This is a bill entitled:

"A bill to place on the free list agricultural implements, cotton bagging, cotton ties, leather, boots and shoes, fence wire, meats, cereals, flour, bread, timber, lumber, sewing machines, salt, and other articles."

The first clause following the enacting clause provides:

"That from and after the day following the passage of this act the following articles shall be exempt from duty when imported into the United States."

While the bill relates to the free list, does the amendment proposing to put glass on the free list in any proper sense relate to the subject matter in the bill, or to any item in the bill?

If under section 7, of Rule XVI, an amendment placing certain articles on the free list is not germane to that portion of the bill which provides for the imposition of duties; and if an amendment legislating in relation to the selection of a Public Printer is not germane to a bill making deficiency appropriations for the Government Printing Office; and if an amendment should

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be germane to the particular paragraph or section to which it is offered; and if one individual proposition may not be amended by another individual proposition even though the two belong to the same class, thus, to a bill proposing the admission of one Territory into the Union, an amendment providing for the admission of another Territory; to a bill for the relief of one individual, an amendment proposing similar relief for another; or to a provision for the extermination of the cotton boll weevil, an amendment including the gypsy moth; or to a bill relating to commerce between the States, an amendment relating to commerce within the several States; as seems to have been uniformly held, does it not seem quite plain that the proposed amendment is not in order under the rules here invoked, which was framed for application to revenue bills to which class the pending bill, H. R. 4413, belongs?

To which part of the subject matter in the bill, or to what item in the bill is the amendment germane? If an amendment placing glass on the free list is germane, why not any schedule or part of a schedule in the Payne tariff law, without reference to whether it is related in a parliamentary sense to the subject matter of the bill or not. In the opinion of the Chair the amendment is not germane to the subject matter in the bill or to any item in the bill. Therefore the point of order made by the gentleman from Alabama is sustained.

Not in order to move to recommit with instructions to eliminate amendment adopted
§ 948 by House Ruling by Speaker Clark,
Sixty-second Congress, on May 22, 1912, as follows:

The gentleman from Pennsylvania [Mr. Olmsted] very correctly thinks this ruling is very important. I do not know whether I agree with him that it is more important than the bill itself. This question has returned to plague most of the Speakers who ever occupied the chair, and the House, too. In one way and another it has been ruled on ever since the days of Mr. Speaker Taylor, away back in 1826. The situation is this: On the 8th day of this month of May the gentleman from Pennsylvania [Mr. Olmsted] made a motion to add a certain amendment to the bill, and it was so done, and it was done on a roll call, the bill being considered in the House as in Committee of the Whole. The amendment was adopted by a very large majority. Either on that day or the succeeding day any Member who voted in the affirmative could have moved a reconsideration. The gentleman from Colorado [Mr. Martin] could not do it, because he voted in

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the negative. So it remains in the bill. After the third reading of the bill the gentleman from Pennsylvania [Mr. Olmsted] made a motion to recommit the bill containing an amendment to it. That is practically what it was. The gentleman from Colorado [Mr. Martin] offered a substitute for the amendment which had just been offered by the gentleman from Pennsylvania [Mr. Olmsted] in his motion to recommit. After some discussion one way and another the gentleman from Illinois [Mr. Mann] suggested to the gentleman from Colorado [Mr. Martin] that there was a way for him to accomplish what he was after, provided the Chair ruled his substitute out of order, and that was to strike out all after the enacting clause and to insert the original bill, leaving out the Olmsted amendment which had been adopted on the 8th of May.

This all took place on the 15th of May.

Mr. MANN. In order to keep the record correct, I will say the motion was to strike out all after the word "that."

The SPEAKER. That is correct. Thereupon the gentleman from Colorado [Mr. Martin] accepted the suggestion of the gentleman from Illinois [Mr. Mann] and offered the original bill minus the Olmsted amendment, and thereupon the gentleman from Pennsylvania [Mr. Olmsted] made two points of order at once. One was that it was not germane to his amendment and the other that it was an attempt to do indirectly what the House could not itself do directly, thereby contravening both the rules and the practice of the House. In addition to these two chief questions there are two or three others of minor interest involved.

The Chair rules against the gentleman from Pennsylvania [Mr. Olmsted] on the first proposition, accepting the suggestion of the gentleman from Illinois [Mr. Mann] that the entire bill as offered by the gentleman from Colorado [Mr. Martin] must in the very nature of things be germane to any amendment that anybody could offer to the bill; that is, for purposes of a motion to recommit.

The contention of the gentleman from Pennsylvania [Mr. Olmsted] on the subject of germaneness is not tenable. It has been held over and over again that a motion to recommit is amendable, and it has been held at least by one Speaker that a substitute for a motion to recommit is proper. There is no question whatever in the mind of the Chair that the bill itself minus the first Olmsted amendment, adopted on the 8th of May, is germane to the proposition of the gentleman from Pennsylvania [Mr. Olmsted] incorporated in his motion to recommit. Therefore the Chair overrules the point of order made by the gentleman from Pennsylvania that it would not be germane.

The second point of order raised by the gentleman from Pennsylvania [Mr. Olmsted] is whether the thing can be done which the gentleman from

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Colorado [Mr. Martin] is attempting to do; that is, to do indirectly on a motion to recommit what the House can not do directly—because that is what it is, and all of us who have paid any attention to this wrangle, know that there is only one thing involved in that substitute, and that is whether you shall cut out the Olmsted amendment adopted on the 8th of May. It might as well have been offered in so many words for all practical purposes.

This question of whether the House on a motion to recommit can do indirectly what the House itself can not do, has been ruled on by every Speaker; almost, beginning with Mr. Speaker John W. Taylor, of New York, on the 31st day of January, 1826. The question was not always exactly in the shape in which this question presents itself, but the substance has always been the same, and the decisions have always been the same. Mr. Speaker Taylor ruled on it, and later Mr. Speaker Polk, and in later days Mr. Speaker Carlisle and Mr. Speaker Crisp ruled on it. Mr. Speaker Reed, when he was in the chair, ruled on it, and when he was on the floor raised a point of order, referred to the same decision, and held on the floor what he held in the chair; Mr. Speaker Henderson ruled on it; Mr. Speaker Cannon ruled on it.

They all ruled the same way; that is, that the House can not do indirectly on a motion to recommit that which it can not do by amendment before engrossment and third reading.

The contention of the gentleman from Pennsylvania [Mr. Olmsted] that you can not have two propositions in a motion to recommit is not tenable. The motion to recommit is intended to give the House an opportunity to express its opinion, upon roll call if needs be, upon any proposition or propositions which have not been inserted in the bill, provided always, of course, that the proposition is germane to the bill itself.

The most elaborate opinion that was ever rendered on the question whether the House can do indirectly on a motion to recommit what it can not do directly by amendment was rendered by Mr. Speaker Carlisle, which I will read in a minute, in lieu of all the rest. But on one occasion Mr. Speaker Blaine refused to pass upon a question of the sort and submitted it to the House, and by a vote of about two-thirds the House took the same position that these other Speakers have taken, and on at least two occasions an appeal was taken from the ruling of the Chair, and the House on both occasions sustained the decision of the Chair by a vote of about 2 to 1.

“On July 27, 1886”—

This is in the Fifth Hinds, section 5531—

“the previous question had been demanded on the passage of a bill restoring to the United States certain lands granted to railroads, when Mr. Robert R. Hitt, of Illinois, moved to recommit the bill with instructions to report

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the Senate bill, for which this substitute had been adopted that had just been voted out. Mr. William M. Springer, of Illinois, made a point of order that the Senate bill was the text that the House had stricken out and that it was not in order to direct the committee to report that which the House had just rejected."

Of course, that was turning the question around.

"The Speaker sustained the point of order, and held that it was not in order to move the recommitment of a bill with instructions to report matters which would not be in order if offered as an amendment in the House."

Nobody will contend, if some gentleman had arisen in his place and made a motion to strike out this Olmsted amendment which was inserted on the 8th day of May, that the Chair would have entertained the motion.

Then, Mr. Speaker Carlisle continued:

"The House had just voted to strike out the text of Senate bill and insert a new proposition, and it was not therefore in order to do indirectly, by way of recommitment, that which could not be done directly by way of amendment."

So, on that point the Chair sustains the point of order made by the gentleman from Pennsylvania [Mr. Olmsted] that the substitute offered by the gentleman from Colorado [Mr. Martin] is out of order because the House can not by a motion to recommit do that which it can not do directly by amendment when a bill is in the amendable stage.

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